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CLEMENCY FOR FALN MEMBERS

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HEARINGS

before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

on

EXAMINING CERTAIN IMPLICATIONS OF THE PRESIDENT'S GRANT OF CLEMENCY FOR
MEMBERS OF THE ARMED FORCES ON NATIONAL LIBERATION (THE FALN)

SEPTEMBER 15, AND OCTOBER 20, 1999

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CLEMENCY FOR FALN MEMBERS

WEDNESDAY, SEPTEMBER 15, 1999

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 9:40 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Grassley, Specter, Kyl, Abraham, Sessions, Feinstein, Torricelli, and Schumer.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM
THE STATE OF UTAH

The Chairman. We are happy to begin this morning. I apologize for being just a little bit late. My whole morning has been like that. I have been here since a little after 6:00 a.m.

On January 24, 1975, during a busy lunch hour, an explosion

ripped through the historic Fraunces Tavern in New York City, killing four people and injuring 55 others. On August 3, 1977, during the morning rush hour, a powerful bomb was detonated in a busy New York office building, killing one man and injuring several others. In March of 1980, armed members of the FALN entered the Carter-Mondale campaign headquarters, bound and gagged women and men inside, and held them at gunpoint as they ransacked the offices.

Now, credit for these and other criminal acts was proudly taken by a terrorist organization calling themselves the ``FALN,'` an acronym from a Spanish title meaning ``the Armed Forces for Puerto Rican National Liberation.'` In all, the FALN has been linked to over 150 bombings, attempted bombings, incendiary attacks, kidnaps, bomb threats, and others, which have resulted in the death of at least six people and the injury of at least 70 others.

On August 11, 1999, President Clinton, who up to this point had only commuted three sentences since becoming President, offered clemency to 16 members of the FALN. This to me, and really almost every Member of Congress, was shocking. And, quite frankly, I think I am joined by a vast majority of Americans in my failure to understand why the President, who has spoken out so boldly in opposition to domestic terrorism in recent years, has taken this kind of an action.

After much public criticism of the offered clemency, the White House spin doctors went to work. They alleged that the 16 offered clemency were not ``directly'' involved with activities that hurt people because they were not convicted of the actual attacks that killed or maimed people. But this is a very poor excuse for clemency. These people were convicted of conspiring to commit acts of terrorism which led to bloodshed. Many of these 16 were involved in building bombs and in storing and transporting explosives, incendiary materials, and weapons. In one raid alone involving the terrorists President Clinton has released information concerning, law enforcement recovered 24 pounds of dynamite, 24 blasting caps, weapons, and thousands of rounds of ammunition, as well as disguises and false identifications. Some were actually videotaped building bombs; others were arrested driving a van full of weapons.

Now, the administration spin doctors also argued that these prisoners received longer sentences than they would have under the Sentencing Guidelines. Well, I will just point out that there are thousands of people in jail who were sentenced before the guidelines. Does each of them deserve to have their sentence reduced? The President will have to pick up the pace of clemency offers if he is to right all those so-called wrongs in the 15 months left in his term.

This whole episode raises a number of questions about the administration's approach to law enforcement and the rule of law in general. Were the normal procedures followed in the processing of clemency opinions? What set these 16 prisoners apart from the more than 4,000 who have petitioned the President for clemency, or the other tens of thousands serving time across the country? What prompted the President to make this offer of clemency? Who recommended it? On what basis was it granted? This hearing is thus absolutely necessary. I think we need to know whether the Justice Department did its job. There are substantial questions as to whether the normal process was followed in this case.

Reportedly, the President made his clemency offer over the strong objections of prosecutors, the FBI, the Bureau of Prisons, and the victims of these crimes. Here we have another example of what people suspect: The Attorney General is asleep at the switch, while the White House is running the Justice Department.

As chairman of the Senate committee with oversight of the Department of Justice, I have requested copies of all relevant documents, including the Department's memo to the White House. Indeed, Senator Schumer, a distinguished member of this committee from New York, and no Republican last time I looked, publicly stated that we should have these documents. But so far the administration and the Department have refused to turn over anything.

I am sorry to say that the White House and the Justice Department are hiding behind their tired old ploy of ``studying'' whether to assert Executive privilege.

If the President has confidence that his decision was the right one or was a just one, then he ought to be willing to hold it up to public scrutiny. Now, there may be a legitimate argument that Executive privilege applies to some materials, although I fail to see any at this particular time. There is no legitimate reason, however, not to allow the Justice Department witnesses to appear before Senator Coverdell's hearing yesterday about the current status and activities of the FALN. Nor is there any legitimate reason for the Justice Department to refuse to allow the Pardon Attorney to testify today about how the clemency process works. Are the White House and the Department of Justice studying or are they really just plain stonewalling? I think we know the answer to that.

At the hearing today we will hear from the law enforcement community and the victims who have been affected by this grant of clemency. I have invited representatives of the FBI and the Justice Department Pardon Attorney's office. I hope the White House and the Department of Justice will allow them to testify. But they are not going to today, apparently.

We have to get to the bottom of this clemency fiasco. But the real bottom line is that the President's ill-considered offer of clemency has now been accepted by 12 of the 16 FALN members, many of whom are now back on the street. These are people who have been convicted of very serious offenses, including sedition, firearms, explosives, and threats of violence. The FALN has claimed responsibility for past bombings that have killed and maimed American citizens, and I pray with all my heart that no one else is going to get hurt.

This is yet another example of this administration sending the wrong message to criminals, be they foreign spies, gun offenders, or, in this case, terrorists. I want to certainly get to the bottom of these matters.

I might mention that just last week I read in the newspaper that the instant check system which I have strongly supported from the outset has uncovered 23,000 people who have unlawfully requested ownership of guns or tried to purchase weapons in violation of the law. Guess how many prosecutions this administration has brought? Sixty-five. At least, that was what the article said.

Now, these are the people bad-mouthing everybody who has a right to keep and bear arms in our society as though they are criminals, when, in fact, the criminals have access to guns almost regardless of what decent, law-abiding citizens are doing. I just get tired of this type of situation.

Let me read to you the letter we got last night from the Department of Justice. This is from the Office of the Attorney General, and this letter is signed by Jon P. Jennings, Acting Assistant Attorney General.

``Dear Mr. Chairman: This is in response to a request communicated to us by committee staff that representatives of the Department of Justice, including the Federal Bureau of Investigation, testify at your hearing on September 15, 1999, on clemency for FALN members. Although the Department appreciates your invitation to testify on these important

matters, we have regretfully concluded that we are not in a position to provide testimony at this time.'

Isn't that amazing?

They go on to say, ``As you know, under the Constitution the authority to grant clemency rests solely with the President.' I agree with that. Then they cite a couple of cases. It says, ``To the Executive alone is entrusted the power of pardon,' reaffirming that the pardon power is ``committed to the exclusive control of the President.'

``We wish, of course, to provide Congress with information to satisfy its oversight needs to the fullest extent possible. In light of the importance of constitutional and institutional interests implicated by your invitation for testimony and the fact that the hearing may, in significant part, address the exercise of an exclusive Presidential prerogative, we are carefully reviewing this matter and consulting with the White House regarding how most appropriately to proceed. Until this important issue has been resolved, we are unable to provide an FBI witness and the Pardon Attorney with the guidance they need regarding the areas, if any, with respect to which their testimony would be inappropriate.'

``We appreciate your willingness to limit the scope of Mr. Adams' testimony, but we remain concerned that he would, nonetheless, face unavoidable uncertainties in testifying at this time. We would prefer to accommodate the committee's request for information about the clemency process through an informal briefing for interested members, which we would be pleased to arrange in the near future. We understand the need to resolve promptly the issues relating to this invitation, and we are endeavoring to do so. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter. Sincerely, Jon P. Jennings,' also a copy going to the ranking member on this committee.

Now, this is pathetic. We have had trouble getting this Justice Department to testify about anything in most instances. We have had the Attorney General consistently raise Executive privilege, consistently raise that a matter is in litigation, consistently raise matters as though they are classified when, in fact, they are not classified. When we finally took her up on holding a classified hearing in the secure room in the Capitol, my gosh, hardly a thing she said should have been classified. Yet when we tried to release that to the public, they redacted almost every other word in the doggone testimony.

Now, this is not what we should have in this country. We should have open disclosure to the American people, and especially on something like this where there is so much heat and so much irritation and so much difference of opinion.

So we are very concerned about it, and I am very concerned that the Justice Department thinks they can get away with this kind of activity. So we will just have to see what happens, but they are going to find themselves without some appropriated monies if they keep this up.

There is a demoralization in the Justice Department today that I have never seen since I have been in the Senate, and that is now 23 years. And I don't blame the people down there being demoralized. They are being run by a bunch of people who don't care about the law or the rule of law, in my opinion, in some of these instances--not all, but some of these instances. And it is causing a real rift. Nobody has been more fair to this Attorney General or this Justice Department than I have. I have bent over backwards to try to accommodate them in every instance.

I happen to know that people in the FBI would be willing to testify if they weren't being muzzled by the political types down there in the Justice Department.

Well, enough said. Let me just say that we have Senator Feinstein here this morning, and we will turn to her for her remarks.

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE
STATE OF CALIFORNIA

Senator Feinstein. Thank you very much, Mr. Chairman. I would like to make just a few comments about this.

Let me at the outset say that serious, thoughtful people urged the President to offer this clemency. These people included former President Carter, 11 Nobel Peace Prize winners, including Archbishop Desmond Tutu and Coretta Scott King, and dozens of religious leaders and organizations.

I don't think that clemency just came out of thin air. However, that being said, I believe strongly that the decision the President made was the wrong one and may well have some terrible impacts down the line.

Apparently, the reasons, as nearly as I have been able to determine, were twofold: one, these people didn't actually plant the bombs; and, second, the sentences were longer than they would have been had the Sentencing Guidelines been in place. If that, in fact, is correct, then I think we ought to take a look at the Sentencing Guidelines with respect to these particular crimes.

I am the ranking member on the Terrorism Subcommittee of this body, and I have done what I could to assist law enforcement in combating terrorism. There is no question in my mind that these individuals were terrorists. And I believe very strongly that the conviction shouldn't just be for the person who planted the bomb. It is one for all and all for one.

If you participate in a terrorist network, you actually participate in the commission of the planting of the bomb, although your hand may not have actually planted that bomb. I believe this very, very firmly. And I think one of the things that has become very awkward is the ability to take one part of a network and say, well, they are not as culpable as another part of the network.

The fact of the matter is that what the network plans to do is kill and maim innocent people. And I think that came very clear to me in Mr. Jimenez's statements on television over the weekend where he was asked the question: In 130 bombings, did you not believe it was possible for an innocent person to be killed? And the answer to that question was ``no.''

Now, I think that defies any reasonable analysis of terrorism. There isn't anyone that would believe that you could participate in a terrorist network, plant bombs in restaurants and office buildings and other places and not run the risk of killing innocent people. It simply isn't credible.

I think granting leniency to terrorists is one of the worst things one can do. We have tried in recent years to send a clear, unequivocal message to terrorists. If you plan or commit acts of terrorism against the United States, we will find you, we will hunt you down, and we will punish you severely. And I think every one of us has heard these words being uttered.

Until this point, President Clinton's administration carried this message forward forcefully, including, for example, apprehending and punishing the Oklahoma City bombers and taking retaliatory strikes against Osama bin Laden.

Interestingly enough, when we struck at that camp, there was no effort to see that a bomb wasn't going to hit someone who may not have actually planted a bomb. We are making a strike against the whole network. So one for all and all for one.

The President's decision last month I believe dramatically

undermines this message. Some have described these prisoners as political prisoners. I don't believe they were. They were terrorists, pure and simple. They were members of the FALN, the Armed Forces for National Liberation, which sought to make Puerto Rico an independent nation, although the dominant majority of people in Puerto Rico had voted down this point of view. While some of them will not admit it, this was alleged and it was proven in the trials against them.

According to the FBI, ``In the past, Puerto Rican terrorist groups struggling for Puerto Rico's independence from the United States have been responsible for the majority of terrorist incidents perpetrated by domestic terrorist groups within the United States.''

The FBI's Terrorist Research and Analytical Center reported in 1996 that the ``FALN has been linked to over 130 bombings which have resulted in over \$3.5 million in damages, 5 deaths, and 84 injuries.''. The prisoners who received clemency were all active participants in this campaign of terror. One for all and all for one.

I am not going to go into the individuals, though how they participated was classic terrorist activity. And, therefore, if you separate one or two out on the basis of a technicality that they didn't actually do this or they didn't actually do that or they have served more time than * * *, I think you weaken the message that we will seek out, we will hunt down, and we will punish severely people who practice terror against the United States of America.

This is a major weakening in this armor that the United States had decided would be its policy. I am hopeful it will be the only aberration. I think, Mr. Pres--Chairman--I keep calling you ``Mr. President,' and I don't really mean to do that. [Laughter.]

Because I really want to keep you as the chairman of our committee.

Senator Sessions. That does have a nice ring.

Senator Feinstein. Mr. Chairman, I really think we ought to take a good look at the guidelines, and if there is any credibility to the argument that they would have served less time had the present guidelines been in place, I would respectfully submit that we ought to strengthen those guidelines.

The Chairman. I am with you.

Senator Feinstein. Thank you very much.

The Chairman. Well, thank you. Your statement I think was very, very good.

We will include in the record at this point the prepared statements of Senators Leahy and Thurmond.

[The prepared statements of Senators Leahy and Thurmond follow:]

Prepared Statement of Senator Patrick Leahy

I did not agree with the President's recent clemency decision, but I recognize that it is his decision to make. When I was State's Attorney for Chittenden County, I did not always, agree when the Governor of Vermont exercised his clemency power, but I understood that it was his to exercise as he saw fit. There were numerous exercises of this constitutional power by the Republican and Democratic presidents with whom I have served over the last 25 years--President Carter used this power more than 560 times, President Reagan more than 400 times and President Bush more than 75 times--and they have not always been matters with which I necessarily agreed.

My heart goes out to the victims appearing here today. When I was privileged to serve as Chittenden County's prosecutor, I had the good fortune to work alongside a number of dedicated State and local

officers. These public servants literally put their lives on the line each day to protect all of us. Their responsibilities require split-second judgment, dedication, timing, and guts. That members of law enforcement and their families also suffered as victims of bombings attributed to the FALN makes these matters even more difficult.

While all are free to comment on the President's clemency decisions--and to disagree, as I do--the Congress should focus on getting its own work done. While the Republican leadership is hard-pressed to find the time to deal with a number of critical legislative issues, the Senate has devoted much time last week and this week to a resolution condemning the President's clemency decision. Yesterday a subcommittee of the Foreign Relations Committee held a hearing on the matter and yesterday the Senate passed a substitute version of the resolution.

Earlier this week, I cautioned against the extreme rhetoric of the version of the Lott-Coverdell resolution that was initially introduced. Through the course of the last week some of the misstatements of fact that were contained in the original version of the resolution have been corrected and its most extreme and dangerous political rhetoric has been eliminated. Yesterday, the Senate adopted a substitute for the resolution that deleted much of the overreaching language of the initial version.

We ought to be careful when anyone, let alone the Senate and Congress of the United States, starts bandying about declarations that accuse the United States Government of making ``deplorable concessions to terrorists,' ' ``undermining national security'' or ``emboldening domestic and international terrorists.'' Playing politics with this matter and accusing the President of ``undermining our national security'' or ``emboldening terrorists'' carries significant risks and was not right. I am glad that language was eliminated from the text of the resolution the Senate passed yesterday.

The American people can judge whether the time and energy being devoted by the Congress to criticizing the President's decision in hearings and in debates on resolutions is the best use of the our legislative resources. I challenge the Senate to make time for votes on the important legislative matters and many qualified nominees whom the Republican majority has stalled for the last several years. The Senate has not completed work on 11 of the 13 appropriations bills that must be passed before October 1. The Republican Congress cannot find time to pass campaign finance reform or a real patients' bill of rights or a raise to the minimum wage or Medicare reforms or the Hatch-Leahy juvenile justice bill. The long-delayed nominees include Judge Richard Paez--whose nomination to serve on the Ninth Circuit Court of Appeals has been pending for more than 3 and one-half years--and the nominations of Justice Ronnie White to be a federal judge in Missouri, Marsha Berzon to be a judge on the Ninth Circuit, Bill Lann Lee to head the Civil Rights Division and scores of other nominees pending before the Senate.

The clemency power is designated by the Constitution to the President. The Senate has already considered the substitute for S.J. Res. 33. Yesterday the Chairman chose to reschedule the hearing to begin earlier than originally set. I was already scheduled to be meeting with the Chief Justice and the other members of the Judicial Conference of the United States. Accordingly, other legislative responsibilities may keep me from attending today's hearing, but I thank the witnesses for sharing their views with us.

Prepared Statement of Senator Strom Thurmond

Mr. Chairman: I am pleased that we are holding this hearing today regarding the President's decision to commute the prison terms of 16 members of the FALN, a Puerto Rican terrorist organization.

These 16 criminals were convicted of various crimes arising out of their involvement with the FALN, a militant group that killed and

maimed innocent civilians and police officers during its reign of terror. These individuals may not have personally committed murder, but they were active members, committing crimes such as weapons and bomb offenses and armed robbery to support their deeds. Each of them was convicted of seditious conspiracy, which involves attempting to destroy by force the government of the United States. Crimes such as this go to the heart of our Nation.

America has long had a firm policy of intolerance regarding terrorism. Granting clemency to members of the FALN sends the wrong message about America's commitment to fighting terrorism. In fact, it sends the wrong message about America's commitment to fighting crime at home.

It is no wonder that news reports indicate that the law enforcement organizations that reviewed the issue, including the FBI and Federal Bureau of Prisons, recommended against it. Moreover, law enforcement organizations have expressed strong opposition. In that regard, I would like to place into the record a copy of a letter from the Fraternal Order of Police and the FBI Agents Association.

The FAIN terrorists do not even appear to regret their actions. One appeared on a Sunday news program and refused to express sorrow or remorse. It is telling that the criminals did not immediately agree to the simple conditions that the President placed on his generous offer. It took them weeks to agree to renounce the use of violence and submit to standard conditions of parole. Indeed, some never did.

There is no question that the President has the Constitutional power to do what he did. The President receives thousands of requests per year for a pardon or clemency, and the Department of Justice has a standard procedure under which the Pardon Attorney reviews these requests each year. However, all indications are that the procedures were not followed in these cases, and that these cases were anything but routine.

News reports indicate that the Justice Department did not make a recommendation for or against clemency in these cases like it normally does. There is no excuse for the Department to stand neutral on very significant requests such as these. Also, the terrorists apparently did not personally take the proper steps to seek the relief, given that one of the conditions for clemency was that the prisoners had to sign statements requesting it.

I am very disappointed that the Administration has chosen not to participate in this hearing today and discuss these matters. The Congress has every right to question the Justice Department regarding the way it handles clemency petitions and whether the procedures were modified for these terrorists. However, I am pleased to have our other witnesses, and I commend them for their participation today.

Grand Lodge, Fraternal Order of Police,
Albuquerque, NM, August 18, 1999.

The Hon. William Jefferson Clinton,
President of the United States,
The White House,
1600 Pennsylvania Ave., NW,
Washington, DC.

Dear Mr. President: I am writing this letter on behalf of the more than 283,000 members of the Fraternal Order of Police to express our vehement opposition to your offer of clemency to sixteen convicted felons involved with a wave of terrorist bomb attacks on U.S. soil from 1974-1983. I would also like to express my own personal confusion and anger at your decision.

Your offer of clemency would immediately release eleven convicted felons who conspired as members of the FALN to plant and explode bombs at U.S. political and military targets. The remaining five would have their criminal fines waived and only two would serve any additional time. These attacks killed six people, wounded dozens and maimed three New York City police officers: Detective Anthony S. Senft lost an eye

and a finger, Detective Richard Pastorella was blinded and Officer Rocco Pascarella lost his leg.

Your claim that none of these people were involved in any deaths is patently false. As members of the terrorist organization that was planting these bombs, all of them are accessories to the killings as a result of the bomb attacks. Two of the persons to whom you have offered clemency were convicted of a \$7.5 million armored truck robbery, which undoubtedly financed the FALN's 130 bomb attacks.

These are not Puerto Rican patriots, these are convicted felons who are guilty of waging a war of terror against Americans on American soil to accomplish their political objectives. Why are you rewarding their efforts?

I can only assume you are again pandering for some political purpose. This time, Mr. President, it must stop before it begins.

The ``human rights advocates'' who are so concerned about the plight of these killers have never shed a tear for the victims. These ``human rights advocates'' are the same people and organizations who maintain that the United States routinely abuses the rights of its citizens and who issue reports stating that our state and local police officers are nothing more than racist thugs who enjoy brutalizing minorities. These ``human rights advocates'' are the same people and organizations who clamor for the release for Mumia Abu-Jamal, a convicted cop-killer, and raise money for his defense.

I do not know, Mr. President, how they decide which rights to advocate and which to ignore, but it seems that murderers and terrorists are more entitled to them than victims. Do not offer clemency to sixteen convicted felons to placate ``human rights advocates.''

I would also strongly urge you to reject any inclination or polling data that indicates this will generate sympathy for you or for a Democratic presidential candidate among Hispanic-Americans. As an Hispanic-American myself, I can assure you that releasing violent convicted felons before they have served their full sentences and to waive tens of thousands of dollars in criminal fines, is no way to appeal to racial pride.

I sincerely hope, Mr. President, that this ill-conceived notion is consigned to the pile reserved for horrendously bad ideas. Many of the best accomplishments of your presidency stemmed from your commitment to law enforcement and to police officers.

This aberration would surely eclipse all we have done to date to keep America safe. Police officers around the country, including me, have stood side by side with you in fighting violent crime and supporting your community policing initiatives. Caving into these advocates is a slap in the face.

I look forward to hearing from you about this matter.

Sincerely,

Gilbert G. Gallegos,
National President.

Federal Bureau of Investigation Agents Association,
A Professional Non-Government Association,
New Rochelle, NY, August 24, 1999.

The Hon. William Jefferson Clinton,
President of the United States,
The White House,
1600 Pennsylvania Ave.,
Washington, DC.

Dear President Clinton: The Department of Justice has very recently announced that you have offered clemency to sixteen members of Puerto Rican terrorist groups. Speaking for the more than 9,000 members of the FBI Agents Association, I strongly urge you to withdraw this offer and not have your Administration give it any further consideration.

The announced offers of clemency would commute the sentences of thirteen who are currently serving prison sentences and cancel the

unpaid fines of three others. Further, the clemency would be conditional on the receipt from them of signed, written renunciations of violence and other promises.

Signing a piece of paper will not put behind the individual responsibility of these convicted criminals and terrorists. Their written promises have no worth. It has been reported that clemency is justified for these sixteen because none of them were specifically convicted of crimes directly involving the loss of life. There are many criminals in federal custody for crimes that did not directly result in the taking of human life. On that basis, are they less worthy of clemency than these sixteen? And there are many criminals in federal penitentiaries, unlike these sixteen, who are not affiliated with organizations that have carried out carefully planned, ruthlessly executed systematic violence against innocent people, property, and the very sovereignty of the United States for over a decade.

We appreciate that our system of justice requires that guilt must be found on specific charges. These terrorists should serve their full sentences and pay their full fines for their own crimes, not because it can be shown that they are simply affiliated with groups whose members have committed even more serious crimes. However, in determining who should receive the very rare benefit of clemency, the least consideration should be shown to those who are acknowledged members of an organization with so much blood and destruction for which to account.

In 1979, the FALN united with three other Puerto Rican terrorist groups and issued a communique in September of that year promising ``coordinated action''. Within a month, these four groups conducted their first joint operation. On the evening of October 17, 1979, a series of eight bomb attacks were conducted against United States government facilities in Puerto Rico. The attacks were timed to coincide with a series of bombings in Chicago and New York. What followed was a steady stream of bombings and attempted bombings against both civilian and military installations, two armored car robberies, the ambush murder of U.S. servicemen, and a rocket attack against a U.S. government office building and another against a U.S. courthouse. Deaths, injuries, and millions of dollars lost were the cost of these terrorist acts.

The sixteen people who have been offered clemency, aside from the crimes for which they were individually convicted, all played roles in supporting the unified Puerto Rican terrorist groups, enabling those groups to function as essentially one effective clandestine terrorist organization. Through their active work in this terrorist network each of the sixteen contributed to some degree in its deadly and destructive mission.

There are many FBI agents who have spent a substantial portion of their careers investigating the crimes of the Puerto Rican terrorist groups and bringing their members to justice. One such agent suffered a serious and debilitating injury from gunfire from one of the terrorists who remains a fugitive. The agent wrote to me of his stunned reaction upon hearing about the clemency offer. The members of the FBI Agents Association add our voice in opposition to the pardon offer. We see it to be inconsistent with basic justice, and inconsistent with the intolerant stance our country seeks to maintain in the face of terrorism.

Thank you very much, President Clinton, for giving consideration to our views and concerns on this matter.

Very truly yours,

John J. Sennett,
President, FBI Agents Association.

[GRAPHIC] [TIFF OMITTED] T8017.001

[GRAPHIC] [TIFF OMITTED] T8017.002

[GRAPHIC] [TIFF OMITTED] T8017.003

[GRAPHIC] [TIFF OMITTED] T8017.004

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[GRAPHIC] [TIFF OMITTED] T8017.006

[GRAPHIC] [TIFF OMITTED] T8017.007

The Chairman. We are pleased this morning to have a number of outstanding witnesses who, as I said earlier, will help to shed some light on the facts of this particular exercise of the President's clemency authority and the Department of Justice's role in that process. So if the witnesses will please take their seats, first we will hear from Mr. Rocco Pascarella, who is a former New York City policeman. Mr. Pascarella was one of those law enforcement officers injured in the 1982 FALN bombing of the Police Plaza in New York City. This particular chart shows Mr. Pascarella way back then. As you can see, this was a photo of Mr. Pascarella and others that appeared in the newspapers at that time.

Following Mr. Pascarella, we will hear from Mr. Bill Newhall. Mr. Newhall was one of those injured, with three of his companions left dead, in the famed FALN bombing of the historic Fraunces Tavern Restaurant in New York City.

We will then turn to Mr. Donald Wofford, who is a former FBI special agent who spent more than a decade investigating FALN activities and was the case agent for the New York City FALN investigation at the time of the Fraunces Tavern bombing.

Following Mr. Wofford, we will hear from Mr. Richard Hahn, who is a former FBI special agent, who, like Mr. Wofford, spent more than a decade investigating Puerto Rican terrorist activities and was assigned to the Chicago FALN investigation.

Next we will be pleased to hear from Mr. Gilbert Gallegos, who is the national president of the Fraternal Order of Police, the largest organization of law enforcement professionals in the United States, with some 283,000 members.

Following Mr. Gallegos, we will turn to Reverend Dr. C. Nozomi Ikuta, who is an ordained minister with a Ph.D. of Ministry from the New York Theological Seminary and a Master of Divinity from Harvard Divinity School. She presently serves in the Division of the American Missionary Association for the United Church of Christ and is here representing that church.

Finally, we will hear from the Honorable Angel Cintron Garcia, who is the majority leader of the House of Representatives of Puerto Rico and the federal affairs coordinator for the Republican Party in Puerto Rico. Mr. Cintron is in his third term as a member of the House of Representatives in Puerto Rico and is the chairman of various legislative committees, including the Committee on Federal and Financial Affairs.

I just want to welcome all of you before this committee. You are an excellent panel. We appreciate the efforts that you have made to be here with us today. We would hope that each of you could limit your oral testimony to 5 minutes or less, and we are just very grateful to have all of you here, and we will turn to you first, Mr. Pascarella.

PANEL CONSISTING OF ROCCO PASCARELLA, FORMER NEW YORK CITY POLICEMAN, FALN VICTIM, WASHINGTONVILLE, NY; WILLIAM P. NEWHALL, FALN VICTIM, NEW YORK, NY; DONALD R. WOFFORD, FORMER FBI SPECIAL AGENT ASSIGNED TO NEW YORK CITY FALN INVESTIGATION, WILMINGTON, NC; RICHARD S. HAHN, FORMER FBI SPECIAL AGENT ASSIGNED TO CHICAGO FALN INVESTIGATION, LONG BEACH, CA; GILBERT G. GALLEGOS, NATIONAL PRESIDENT OF THE GRAND LODGE, FRATERNAL

ORDER OF POLICE, WASHINGTON, DC; REVEREND DR. C. NOZOMI IKUTA,
UNITED CHURCH OF CHRIST, CLEVELAND, OH; AND HON. ANGEL M.
CINTRON GARCIA, MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES
OF PUERTO RICO, AND FEDERAL AFFAIRS COORDINATOR FOR THE
REPUBLICAN PARTY OF PUERTO RICO, SAN JUAN, PR

STATEMENT OF ROCCO PASCARELLA

Mr. Pascarella. Good morning, Senators. My name is
Detective Rocco Pascarella.

On December 31, 1982, I was a police officer assigned to
security at police headquarters in New York City. I had joined
the force at age 21, and in my 13 years on the New York City
police force, I had worked in various precincts and
assignments.

The Chairman. Could you pull the microphone over, Mr.
Pascarella, so that we can hear you better?

Mr. Pascarella. About 2 weeks prior to December 31, 1982, I
had been assigned to the police headquarters security detail.
On what should have been a festive evening, FALN terrorists
were at work in New York City. It was about 9:30 p.m. when my
colleagues and I heard a tremendous explosion. At first we
thought it was fireworks, but soon after, we were told that a
bomb had exploded at 26 Federal Plaza, which is two blocks from
the police headquarters. I was directed by my sergeant to
search the perimeter of the headquarters building for anything
suspicious that might be a bomb. As I approached the rear
unused entrance to the building, I noticed a lot of debris. As
I turned to search, the bomb went off.

The blast that shattered my life that night was the work of
the FALN. This notorious group of terrorists had been planting
bombs for some time--ostensibly to secure Puerto Rican
independence. But their criminal activity was not limited to
indiscriminate bombing. It also included apolitical crimes such
as weapons possession and robbery.

That I or my colleagues was not killed that night is a
fortunate coincidence. FALN bombs were placed at locations
where it was likely that innocent people would be killed or
injured. I suffered the loss of one leg below the knee, severe
scarring on my other leg, the loss of hearing in one ear, and
the loss of my eyesight to the extent that I am no longer able
to drive.

I was in the hospital for 2 months. I underwent six
operations for my leg and ears, and I received over 40 stitches
to my face.

I spent a year going through rehabilitation to learn to
walk again with my artificial leg and injured right leg.
Because of my injuries, I have been unable to return to active
duty in the police force. I am on an extended medical leave.
The pain and trauma of these disabling injuries were multiplied
by the suffering it caused my family: my parents, my daughter,
my friends, and my colleagues in the New York City Police
Department. When you consider all the others whose lives were
devastated during the FALN onslaught, the grief and suffering
grows exponentially.

Seventeen years later, the insidious cancer that is the
FALN again ulcerates American life. Forces have been at work to
position these criminals for Presidential clemency. Under
ordinary circumstances the prospect of their release would be
laughable. What could motivate any President to grant a request
with the blood of American citizens?

Perhaps everyone in this room and everyone in America
should review these cases: They read the United States versus
the defendants, or the State of New York versus the defendants.
Rocco Pascarella did not prosecute these cases. You did. The

people did. And when it is done and just sentences are imposed, they should be made to stand, particularly in cases of terrorism. Because when terrorists strike, they are not just maiming me; they are striking at the very foundation of America. Our very freedom makes us particularly vulnerable to the demented minions of terrorists all over the world.

In the press, their supporters describe these FALN terrorists as freedom fighters and political prisoners. That characterization is an abomination. The basis of American democracy is dialogue and compromise within the political process. Democrats and Republicans do not butcher each other in the streets of Washington or punctuate their rhetoric with bombs or bullets. The indiscriminate killing and maiming of innocent people to make a political statement is an attack on the American political system and should be dealt with accordingly. Nor do these misfits, as some would imply, represent the goals and ideas of Puerto Rican people, who have democratically rejected Puerto Rican independence and morally rejected slaughter as a means to a political end.

In this very forum, the clamor is heard for more severe sentences for hate crimes. What greater hate than to kill, not because of some demented distaste for another race or ethnic group, but to kill anyone, man, woman, or child, to make a merely political statement?

And, finally, what kind of message does this exercise of clemency send to the world's terrorists? The U.S. military is sent halfway around the world to destroy a terrorist's camp in a foreign nation, while at home a vile group of criminal terrorists as exists anywhere in the world is released upon the strength of a hard-wrought promise never to engage in violence again. A release, it appears, that is contrary to the recommendations and warnings of every Federal agency involved in the investigation, apprehension, trial, and incarceration of this group.

You, as elected representatives and as citizens of this Nation, have a responsibility to the American people to expose the circumstances and motivation which led to this assault on the American political justice system and the American political system. You owe it to yourselves. You owe it to your constituents. You owe it to me. And you owe it to past and future victims of FALN murder and terror.

Thank you.

[The prepared statement of Mr. Pascarella follows:]

Prepared Statement of Detective Rocco Pascarella

Good Morning Senators: My name is Rocco Pascarella.

On December 31, 1982, I was a police officer assigned to security at Police Headquarters in New York City. I had joined the force at age 21, and in my 13 years on the New York City Police force I had worked in various precincts and assignments. About two weeks prior to December 31, 1982 I had been assigned to the Police Headquarters security detail. On what should have been a festive evening, FALN terrorists were at work in New York City. It was 9:30 p.m. when my colleagues and I heard a tremendous explosion. At first we thought it was fireworks. But soon after, we were told a bomb had exploded at 26 Federal Plaza which is two blocks from police headquarters. I was directed by my sergeant to search the perimeter of the headquarters building for anything suspicious that might be a bomb. As I approached the rear unused entrance to the building I noticed a lot of debris. As I turned to search, the bomb went off.

The blast that shattered my life that night was the work of the FALN. This notorious group of terrorists had been planting bombs for some time--ostensibly to secure Puerto Rican independence. But their criminal activity was not limited to indiscriminate bombing. It also

included apolitical crimes such as weapons possession and robbery.

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Seventeen years later, the insidious cancer that is the FALN again ulcerates American life. Forces have been at work to position these criminals for presidential clemency. Under ordinary circumstances the prospect of their release would be laughable. What could motivate any president to grant a request with the blood of American citizens?

Perhaps everyone in this room, and everyone in America, should review these cases: They read the United States vs. The defendants, or the State of New York vs. The defendants. Roc Pascarella did not prosecute these cases. You did. The people did. And when it's done, and just sentences are imposed they should be made to stand, particularly in cases of terrorism. Because when terrorists strike, they are not just maiming me, they are striking at the very foundation of America. Our very freedom makes us particularly vulnerable to the demented minions of terrorists all over the world.

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You, as elected representatives and as citizens of this nation, have a responsibility to the American people to expose the circumstances and the motivation which led to this assault on the American political system and the American justice system. You owe it to yourselves. You owe it to your constituents. You owe it to me. And you owe it to past and future victims of FALN murder and terror. Thank you.

The Chairman. Well, thank you, Mr. Pascarella. We

appreciate your testimony very much.
Mr. Newhall, we will turn to you.

STATEMENT OF WILLIAM P. NEWHALL

Mr. Newhall. Thank you. Good morning. My name is Bill Newhall, and I have been invited to speak before this committee because I was injured in the FALN bombing of Fraunces Tavern in January 1975.

On January 24 of that year, I was having lunch with two colleagues, Charlie Murray and Frank Connor, and three clients, Jim Gezork, Alex Berger, and Dave Urskind. We were seated at a table overlooking Broad Street, about to return to work, when a bomb placed in a doorway next to our table was detonated, destroying our corner with shrapnel and debris. Jim, Alex, and Frank died terrible deaths, barely recognizable to their families. Another man, Harold Sherburne, who was upstairs at the time of the blast, was also killed. Charlie, David, and I suffered multiple wounds, many of them from shrapnel. I won't describe those wounds to you here. But more than 50 other people sustained injuries as well. With the time limits of this hearing, it is impossible to adequately describe the effects of this savagery on the injured and dead as well as their families.

This bombing, a terrorist act against unarmed and unsuspecting civilians, and its lethal results were followed by many more, though fortunately none was as deadly as this one. I don't recall ever hearing any expression of remorse, concern, or contrition by any member of the FALN for the pain and loss they caused those directly affected, or their families, for this or any other bombing.

Why were these bombings carried out? Because the FALN was frustrated by its inability, in any voting referendum, to persuade a significant number of its fellow Puerto Ricans of the merits of its cause. The resulting strategy was to murder U.S. civilians.

None of the FALN members who were recently released through the President's grant of clemency were ever convicted of the bombing of Fraunces Tavern, but they were proven in courts of law to be supporters of those terrorist methods. Some were videotaped making bombs--and those weren't for science class--and all were clearly committed to acts of violence against innocent people and the U.S. Government.

The living can speak, but so can the dead, through their surviving families, friends, and our memories of them. That is why I am here before you. We have heard recently in New York how much these self-styled ``freedom fighters'' sacrificed and lost because of their political beliefs. To the contrary, those who truly paid for the FALN's political beliefs were their dead victims. Men of character, humor, and promise, they will never return to their loved ones or receive a hero's welcome the way those released this past weekend did. And what about the price paid by those permanently injured or scarred?

I understand the goal of this committee is to examine the way in which the clemency process was carried out. I, and, I am sure, many other citizens, including the many law enforcement personnel who worked so hard to halt the FALN bombing campaign and to whom we owe such deep gratitude, are curious about this as well. I would like to know whether the views of any victims or their families were sought, much less obtained and considered.

It is easy to suspect that political grandstanding parading as compassion was at work here. If so, not only is it an affront to those the FALN killed and maimed, but it delivers perhaps the worst message of all: mere indifference to

terrorist activities of all kinds and the human misery they cause.

Thank you.

[The prepared statement of Mr. Newhall follows:]

Prepared Statement of William P. Newhall

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The Chairman. Well, thank you, Mr. Newhall. We really appreciate having your testimony here.

Mr. Wofford, we will turn to you.

STATEMENT OF DONALD R. WOFFORD

Mr. Wofford. Good morning. My name is Don Wofford. I am a

retired FBI agent after 23 years, currently living in North Carolina.

From 1974 to 1980, in Manhattan, I was the case agent for the investigation of the FALN, the bombing of Fraunces Tavern that Bill has so eloquently explained, which, of course, as everyone knows, is the most magnificent and violent bombing that they ever did. However, I think it is important for me to in a few minutes give kind of an overview and mention some more very violent things that they did and try to pick up on the eloquent statement by Mrs. Feinstein that the people who support and enable these terrorist networks to continue are just as guilty of conspiracy and planning and doing the acts as other people.

I will just talk very quickly--since he was a victim of Fraunces Tavern, and that was a very eloquent statement. Thank you very much.

The person who walked in Fraunces Tavern came in there at 1:22 p.m. We know that because a waiter saw him. He had a bag in his hand. He walked into not more than 5 feet from where his table was in the corner of the restaurants, and he laid it down and he left. Now, he knew, that person knew, that when that bomb went off, he was going to kill a lot of people. He didn't know how many, but he knew he was going to kill a lot. It was a bustling restaurant in the middle of Wall Street. That is why he came there. He didn't go there to protest Puerto Rican independence. He put that bomb down to kill people. That is all he came there to do.

Later, in the communique, which we have, I think, as--it will be put up later--the FALN claims that bomb. The FALN says, ``We,'' the FALN, not ``me,'' the bomber, not ``me,'' the person who provided false identity, not ``me,'' the lookout, not ``me,'' the other member. ``We,'' the FALN, we bombed Fraunces Tavern. And they did. They destroyed Fraunces Tavern. It was the most unbelievable bombing I have ever been to, and that includes Vietnam.

Prior to that, very quickly, the FALN tried to kill an NYPD officer by putting a booby trap on a door and calling 911. That was FALN number two, and prior to that, number one, the FALN's first bombing in October of 1975, they put bombs all over downtown Manhattan in major corporations--Citicorp, Marine Midland, W.R. Grace, Fortune 500 companies. Now, they took no steps to ensure those bombs didn't kill anybody. They left those bombs laying there on the sidewalk. They walked away from them. They were timing devices. Those bombs went off. It is an act of mercy and an act of God that nobody--a late worker, a clean-up person, a police officer, whoever--didn't walk by one of those bombs and get blown up. It was not the FALN's fault that that didn't happen. It was God's grace that it did not happen.

The FALN continued this series of bombings over a period of a couple of years, and a couple of key events happened. In 1976, in Chicago--and by now the FALN had moved to Chicago, and they were doing things like setting off simultaneous bombs in Chicago, Washington, DC, and New York. Now, one or two people can't do that. That requires lots of people. You have got to have bomb makers and drivers and cars and people that call in the communiques. That is not a one- or two-man operation. And we were quickly beginning to see that this was a lot bigger operation than we first thought it was.

A bomb factory was found in 1976 in Chicago full of dynamite and blasting caps and everything that they needed to run their organization. That investigation led to obtaining warrants on four people immediately. But those four people had ties, direct ties to two people in New York who we decided were our main suspects: William Morales and Luis Rosado. So we went

to work on them.

Elizam Escobar, Adolfo Matos, and Dylcia Pagan were associates of those people, and those were three, among others, of the people that were released in the back of that van. So those people were members of the FALN. They were participating in armed actions when they were arrested in that van in 1980, and there was no doubt that that operation was a two-city or three-city operation at the time.

In 1978, William Morales confirmed all our suspicions. A bomb went off in his hands, blew both his hands off, almost destroyed one side of his face, and damaged him severely. In his bomb factory in Queens, in an office building in the middle of a residential section, were 66 sticks of dynamite, numerous blasting cap guns and ammunition, and absolute proof that William Morales' bomb factory was involved in Fraunces Tavern, was involved in the attempt to get the police officer in the first bombings, because the communiques made all fit a machine sitting in that building that they had purchased. They matched up. The FBI lab was able to say this machine ran off these communiques. So William was obviously a bomber and paid for it dearly by the injuries he received. He is now, by the way, hiding out in Cuba as a fugitive.

Following all of these, the 1980 arrest of these individuals that Mr. Hahn is going to pick up on and discuss was a big break for us because it found New York people and Chicago people in a van, and the statement that they weren't involved in criminal violent activities--they were in the van, all of them had guns, and we now know that they were there to rob an armored car. So for them to stand up now and say that they weren't involved in violent activities--the intervention of the police officers maybe kept the event from happening, but they were involved in violent activities.

The FALN was a terrorist group. It spent hours counter-surveilling. It spent hours obtaining false identification and apartments and names that we couldn't trace, stealing weapons, obtaining dynamite and so forth. So these breaks that we got along the way which resulted in us getting warrants for people were very, very important. The FALN, I certainly admit, was a very efficient terrorist organization. Since 1982, they have not committed any more bombings since Rocco was injured. But who knows now where this tale will end or where this investigation will lead?

I will be glad to answer any questions later. Thank you, sir.

[The prepared statement of Mr. Wofford follows:]

Prepared Statement of Donald R. Wofford

My name is Donald R. Wofford and I am currently a retired FBI agent having retired in 1995 with 23 years of service with the FBI.

During the period 1974-1980 I was assigned to the investigation of the FALN in New York and was the Case agent for the investigation of the FALN when it claimed the bombing of Fraunces Tavern Restaurant on January 24, 1975. During this period I was participating in an investigative Task Force comprised of 50 FBI agents and 50 NYCPD detectives. This task force investigated all FALN claimed bombings and other criminal acts.

During the period 1980-1984 I was assigned to Newark, N.J. where I investigated FALN suspects as well as other terrorist suspects.

From 1984-1987 I was assigned to Butte, Montana and was investigating the Aryan Nations and its underground group ``the order.'' This investigation of white supremacist criminals resulted in 23 individuals being convicted for armed robbery, bombings, murder, and conspiracy.

During the period 1987-1989 I was assigned to FBI headquarters as a

Supervisory Special Agent in the Domestic Terrorism Unit. My major duties included authorizing Domestic Terrorism investigations in accordance with the Attorney General's guidelines.

The FALN is a clandestine terrorist organization that has dedicated itself to ``liberating Puerto Rico from United States control'' through the use of violent actions including bombings, incendiary attacks, kidnappings, attempted prison escapes, and threats. These actions have been financed through various illegal activities including armed robberies. The FALN has been linked to over 130 bombing-type actions (actual bombings, attempted bombings, incendiary attacks and bomb threats) since October 26, 1974. These incidents have resulted in over \$3\1/2\ million in damages, 5 deaths and 84 injuries including four police officers who were maimed. In addition, the group has perpetrated three armed takeovers in which innocent people were restrained, robbed and terrorized. The group is convinced that armed struggle is the only vehicle through which independence can be achieved. Unlike other independence groups that engage in violent actions on the Island of Puerto Rico itself, the FALN has elected to stage its violent actions within the continental United States.

The FALN publicly emerged on October 26, 1974, when the group claimed credit for five bombings that occurred in downtown New York City. These explosive devices were believed to have been concealed in airline shoulder type flight bags containing from three to five propane tanks, a quantity of high explosives believed to be dynamite, a detonator, a wrist watch timer, and a battery. In total, over \$1,000,000 damage was sustained in those bombings, but no injuries occurred. The FALN claimed credit for this bombing in a communique left in a phone booth which was listed as FALN Communique #1.

The next known bombing claimed by the FALN occurred on Wednesday, 12/11/74, when an anonymous Hispanic female notified the NYCPD that a dead body was located in a building at 336 East 110th Street, Manhattan. A radio car was dispatched and when the investigating patrolman pushed upon an outside door to an abandoned five story tenement located at this address, the explosion occurred, seriously injuring the officer, and ultimately resulting in the loss of his eye.

An examination at this bomb site revealed that a blue colored airline flight bag had been secured to the inside of the door, and contained what is believed to have been three propane tanks, a large lantern type battery, and a pipe nipple approximately ten inches in length, containing what is believed to have been dynamite. The booby trap bomb in this instance was detonated by a clothes pin type firing device which was tied to the door with string, which detonated the bomb upon opening the door. Almost immediately after the bombing, an unidentified Spanish accented female telephoned the Associated Press advising that she was part of the FALN and that a communique claiming responsibility could be located in a telephone booth at Tenth Avenue and 52nd Street, New York, NY. This letter was recovered by the NYCPD and when examined, revealed that it was identified by the FALN as Communique #2 and was determined to have been typed on identical letterhead paper as Communique #1.

The group's next action, occurring on January 24, 1975, was even more ruthless and resulted in four deaths, over 60 injuries, and extensive property damage. The target was the historic Fraunces Tavern in New York City and the device exploded during the busy lunch period at approximately 1:22 p.m. Four persons were killed, over 50 injured, and property damage exceeding \$300,000 was sustained. Shortly after the explosion, the Associated Press in New York received a telephone call from a male with a Spanish accent who stated that the Armed Forces of Puerto Rican National Liberation (FALN) was responsible for the bombing, and a communique explaining the reasons could be found in a telephone booth located at Bridge and Water Streets in New York (which is approximately 3 or 4 blocks from the bombing scene itself).

The communique referred to by the caller was recovered by the NYCPD and, when examined, revealed it was identified by the FALN as Communique #3, and was found to have been typed on letterhead paper of

the FALN, identical to Communiques #'s 1 and 2, recovered in previous bombings claimed by this group.

FBI Explosive Experts working in close coordination with the NYCPD Bomb Squad have closely examined all the debris collected from the explosion site and have recovered what appears to be a back plate from a watch; a severely mutilated latch believed to have come from the case that held the bomb; pieces of black plastic or leather from the case; miscellaneous small pieces of unidentifiable metal, and a piece of a valve stem believed to have come from a propane tank (probably a Bernzomatic type used for home plumbing repairs and/or camping equipment). No information is available as to the specific explosive used, although experienced estimates indicate dynamite.

A witness has been located who observed a bag in the vestibule portion separating the tavern from the Anglers Club entrance. He identified this bag as approximately 2 1/2 feet long, 1 1/2 feet high and 1 foot wide. He described this bag as a gray synthetic cloth type bag with black plastic piping around the outside, having 2 black straps around the middle, and having a single black handle. He added that this bag appeared to be new and inexpensive. The witness places the bag at the specific location in the vestibule which explosive experts indicate was the seat of the explosion. Subsequent interviews of two other witnesses indicated that the bag was not at the site as late as 1:10 to 1:15 p.m.

The letterhead paper recovered in all three bombings, had a five pointed star design with the letters FALN imposed thereon. Above this star were the two words Fuerzas Armadas and below the star were the words de Liberacion Nacional Puertorriquena (which translates as Armed Forces of Puerto Rican National Liberation). All letters were found to have been prepared on a typewriter with Smith Corona face type (available on several types of machines but probably a Smith Corona portable). There were four copies of Communique #1 recovered, but only one original typing, although examination of recovered specimens clearly indicate two typings. The original of the typed communique was in red ink and mailed to a Spanish language newspaper in New York. All of the communiques recovered have been found to have been prepared on Gestetner watermarked paper.

In their next attack, the FALN reverted back to more ``symbolic'' bombings when they attacked four New York City buildings in April, 1975.

The FALN first made its presence known in Chicago, Illinois, on June 15, 1975, when they claimed credit for two powerful bombs that detonated in the downtown Loop area. In October, 1975, the FALN attempted to display their strength by simultaneously exploding bombs in New York City, Washington, D.C., and Chicago. During the months that followed, the FALN detonated several more devices in New York and Chicago, causing property damage and injuring innocent bystanders; however, for some unexplained reason they did not claim credit for these incidents. One of these attacks involved the placement of incendiary rather than explosive devices in the downtown Chicago Marshall Field Department Store.

In late June, 1976, the FALN resumed making claims for its terrorist actions which were, during the subsequent years, to include both explosive and incendiary device attacks. One of these attacks was on the Hilton Hotel in New York City in September, 1976, and resulted in \$300,000 in damages. Another victim target was the Merchandise Mart in Chicago which suffered \$1,335,000 in damages from a February, 1977, bombing. An incendiary device placed in New York City's Gimbel's Department Store on October 11, 1977, resulted in a fire that caused \$125,000 in damages. Perhaps the most violent of these attacks which occurred between June, 1976, and July, 1978, was directed against the Mobil Oil Company employment office in New York City. On August 3, 1977, a powerful bomb detonated inside this office during the busy morning rush period, killing one man and injuring several other bystanders. It was painfully clear that this bombing was designed to kill people and was anything but ``symbolic'' in nature. Marie Haydee

Beltran Torres was subsequently convicted of perpetrating this act and was sentenced to a life term in federal prison.

In May, 1978, the FALN again expanded its scope of activity by simultaneously placing devices in New York, New Jersey, and Washington, D.C., and threatening to bomb Chicago targets. A month later the group placed incendiary devices in three department stores in the Chicago suburb of Schaumburg, Illinois.

On November 3, 1976, the FALN suffered a serious setback when Chicago Police discovered their ``bomb factory'' which was located in an apartment within the city's north side Hispanic community. This discovery led to the identification of Carlos Alberto Torres, his wife Marie Haydee Torres, Ida Luz ``Lucy'' Rodriguez, and Oscar Lopez-Rivera as being members of the FALN. All four individuals immediately vanished, thus ending the double lives they had been leading for several years. The four had masqueraded as law abiding community members and had assiduously avoided doing anything that would have drawn attention to themselves. Indeed, ``Lucy'' Rodriguez was working in an executive position with the Federal Government when the ``bomb factory'' was uncovered.

Based on information located in the Chicago bomb factory, the New York FBI determined that Luis Rosado-Ayala and William Guillermo Morales were prime suspects in the New York bombings claimed by the FALN. In addition, it was determined by the New York FBI that Rosado-Ayala and Morales were associating closely with, among others, Dylcia Pagan, Adolfo Matos, and Elizam Escobar.

In July, 1978, the FALN suffered still another setback--one that was destined to drastically change the nature of the organization. On July 12, 1978, a powerful explosion occurred in a New York City apartment, maiming the resident. Subsequent investigation determined the apartment was, in fact, an FALN ``bomb factory,' and the injured man who lost most of both hands was FALN member William Guillermo Morales, who was constructing a pipe bomb when the explosion occurred. Further investigation identified the four missing Chicago FALN members as being involved with the New York ``bomb factory.' As the police were clearing the debris from the apartment, FALN incendiaries, apparently placed prior to the explosion, ignited in several New York department stores. These were followed by a communique from the FALN that had been mailed prior to the ``bomb factory'' explosion.

FBI and NYCPD examination of the Morales ``bomb factory'' revealed that William Guillermo Morales was severely injured when a pipe bomb, which he was constructing, exploded literally in his hands, and his most severe injuries were the instant amputation of both hands. Inventory of items seized in this bomb factory include 66 sticks of dynamite and 5,000 rounds of ammunition. In addition, watches, batteries, wires, circuits, and all types of tools were recovered among other items. As a result, the NYCPD Bomb Squad stated at the time that the explosives and incendiaries found in this Queens bomb factory could have constructed at least 28 explosive devices and 2,632 incendiary devices of a type customarily used by the FALN.

The FBI and NYCPD also recovered two Gestetner machines which were used to produce stencils and for duplication. These two machines were purchased by an organization ostensibly supporting Hispanic affairs throughout the United States. It was determined that Carlos Alberto Torres, Oscar Lopez Rivera, Luis Rosado-Ayala, and William Guillermo Morales were members of this organization which was headquartered in New York City. Following an exam by FBI and NYCPD experts, it was determined that defects in the Gestetner duplicating machine found in the Queens bomb factory were consistent with defects noted on the FALN Communique #1. Communiques in 63 separate bombings were produced from a stencil located in the Queens bomb factory and this stencil also produced several hundred blank FALN communiques bearing the FALN logo which were also discovered in the Queens bomb factory.

The New York ``bomb factory'' caused the FALN to change its operations and make itself into an even more clandestine and devious organization. Rather than attempt to stage ``symbolic'' attacks in

order to ``prove'' to supporters and police that the group continued to exist, or to send communiques designed to alert the world of their continued presence, the FALN quietly and methodically constructed an ``underground'' network of members and supporters and gathered necessary supplies for their ``war of freedom.'' Only when they felt they had developed a strong and secure organization did the FALN resume overt political operations.

In October, 1979, explosive devices detonated in New York and Chicago in conjunction with a series of bombings on the Island of Puerto Rico. Communiques issued both in the U.S. and Puerto Rico claimed credit for these incidents in the names of the FALN and three other island-based groups. Curiously, the FALN name appeared first on the U.S.-issued communique, while that group's name appeared last on the island-issued document. Clearly the intent was to illustrate that the FALN had perpetrated the mainland attacks while the other groups had done the island bombings. The joint communique also informed the world that at least four Puerto Rican independence groups were now working in cooperation with one another. In November, 1979, the FALN struck again in Chicago with the bombings of two military recruiting offices and an armory.

In mid-March, 1980, the FALN staged a new terrorist tactic when members of the group seized the Carter-Mondale Presidential Campaign Office in Chicago and the George Bush Campaign Office in New York and held campaign workers hostage while ransacking the facilities and stealing supporter lists. On the days that followed these incidents, the group sent threatening letters to around 200 Carter-Mondale supporters including Demographic National Convention delegates living throughout the State of Illinois.

On April 4, 1980, the FALN suffered its most serious setback when Evanston, Illinois, Police arrested 11 members who had assembled in that municipality for the purpose of robbing an armored truck making a pickup at Northwestern University. Seized with the arrestees were a stolen truck, several stolen vans and cars, 13 weapons, and various disguises and articles of false identification. Those arrested included Carlos and Haydee Torres, Lucy Rodriguez, her sister Alicia Rodriguez, Dylcia Pagan, the common-law wife of William Morales, Adolfo Matos, Carmen Valentin, Luis Rosa, Dick Jimenez, Elizam Escobar, and Freddie Mendez.

Investigation arising from these arrests revealed that from the time of the discovery of the New York ``bomb factory'' in August, 1978, the FALN had developed an intricate ``underground'' operation. ``Safehouses'' were discovered in Milwaukee, Wisconsin; Newark, New Jersey; New York City, and Chicago. Vehicles had been stolen through various methods in several states. Quality false identifications had been established. Through investigation it became apparent that the group had developed sources of income sufficient to easily maintain its existence. This became clear when it was learned that their Milwaukee ``safehouse'' had been purchased for cash and that tens of thousands of dollars in currency had been hidden there.

Good evidence was also developed to reflect that on December 24, 1979, the FALN robbed an armored truck making a pickup at a Milwaukee supermarket. Additional evidence showed that the FALN had invaded the Oak Creek, Wisconsin, Armory, in January, 1980, in an unsuccessful effort to steal military arms. This invasion failed only because the three military employees captured by the raiders refused to open the weapons vault. Evidence was also developed to show that FALN members were responsible for the armed robbery of the Radio Shack Store in Highland Park, Illinois, on April 1, 1980.

The April 4, arrests undoubtedly sent shock waves through the FALN, however, it did not end the organization and did not break the spirits of those incarcerated. Immediately all 11 arrestees claimed to be ``prisoners of war'' and refused to cooperate with authorities. After Haydee Torres was separated from the group so that she could be returned to New York to stand trial for her role in the fatal Mobil Oil bombing, the remaining ten FALN members were found guilty in Illinois

courts of a variety of state violations. All were sentenced to lengthy prison terms in Illinois maximum security penal institutions. Haydee Torres was found guilty in New York and subsequently sentenced to serve a life term in federal custody.

On December 10, 1980, a Federal Grand Jury returned indictments in Chicago against the ten April 4 arrestees in Illinois custody and against the still missing Oscar Lopez, charging among other crimes Seditious Conspiracy against the U.S. Government. During early February, 1981, trial was held for the ten in Federal Court in Chicago. All claimed to be ``prisoners of war'' and refused to defend themselves. All were found guilty of Seditious Conspiracy, violation of the Hobbs Act, and violation of Federal Firearms statutes. Several of the individuals were also found guilty of interstate vehicle theft. On February 18, 1981, the ten were sentenced to prison terms ranging from 55 to 90 years to commence after they, had completed their Illinois prison terms that ranged from 8 to 31 1/2 years.

On the evening the federal indictments were returned, December 10, 1980, two presumed FALN members, Luis Rosado-Ayala of New York and Felix Rosa, brother of indictee Luis Rosa, were arrested following a high speed chase arising from the armed robbery of a van from a Highland Park, Illinois, Ford dealer. This brazen robbery was similar to previous FALN actions. Rosado subsequently became a local and federal fugitive when he jumped bond and Illinois authorities requested a Federal Unlawful Flight to Avoid Prosecution (UFAP) warrant. Rosa became a fugitive when he failed to come for the second day of his trial after having been present on the first day. He was subsequently arrested by Illinois State Police who returned him to court where he was found guilty of armed robbery and vehicular theft and sentenced to serve a 22 year prison term.

In the months that followed the federal convictions, all of the incarcerated FALN members remained dedicated to their cause except for Freddie Mendez who agreed to cooperate with the government. Mendez subsequently provided a wealth of information concerning the operations of the FALN. In discussing some of the FALN's terrorist activities, he mentioned that the group had been responsible for William Morales' escape from prison in New York during the spring of 1979. At the time Morales was serving an 89 year term on charges arising from the New York ``bomb factory.'' Mendez indicated that despite being maimed Morales returned to a leadership position with the FALN and had been one of the primary planners of the ill-fated April 4 armored truck robbery and of the Oak Creek Armory invasion.

On November 19, 1980, a heavily armed group of around eight individuals took over a Texaco Service Station located at 6140 North Broadway, Chicago, in an effort to rob an armored truck that was scheduled to make a pickup at that location. Victims of the robbery subsequently selected Felix Rosa and Eduardo Negrón from a lineup and both men were arrested and charged with this crime.

On May 29, 1981, Glenview, Illinois, Police arrested fugitive FALN member Oscar Lopez in company with MLN member Wilfredo (Freddie) Santana after the pair was stopped for a traffic violation. Various forms of false identification were found in conjunction with the arrest. Subsequent investigation led the FBI to Lopez' secret residence at 3151 West Ainslie Street, Chicago, apartment 1B, wherein approximately six pounds of dynamite and four blasting caps were recovered along with false identifications and FALN related materials.

Lopez was subsequently tried for Seditious Conspiracy, violation of the Hobbs Act, illegal weapons possession, and interstate transportation of stolen motor vehicles, and was found guilty in Federal Court in Chicago on July 31, 1981. He was sentenced to serve 55 years in federal custody on August 11, 1981.

The November 19, 1980, attempted armored truck robbery and the December 10, 1980, armed robbery of the van proved that the FALN continued to exist despite the arrests of 11 members. 1980 through early 1982 was to be a period of rebuilding for the FALN similar to the 16 month period that followed the explosion of the William Morales

``bomb factory'' in New York. The group made no claims of credit for any terrorist actions during this span although its surface group, the MLN, repeatedly assured supporters that the FALN continued to be alive and well.

On the late evening of Monday, February 28, 1982, four powerful bombs detonated in front of business institutions in New York's financial district. The FALN claimed credit via a five page communique which was found in a phone booth at 91st and Riverside Avenue after an anonymous call was received by someone claiming to be the FALN. In this communique, the FALN stated that their jailed comrades and members of their organization were being mistreated in jail. The FALN identified its jailed comrades and members as Oscar Lopez Rivera, Lucy Rodriguez, Carlos Alberto Torres, Haydee Torres, Luis Rosa, Alicia Rodriguez, Ricardo Jimenez, Dylcia Pagan Morales, Adolfo Matos Antongiorgi, Elizam Escobar, Carmen Valentin.

On early Monday morning, September 20, 1982, the FALN struck again in New York detonating a bomb in front of the Bankers Trust on Park Avenue. The group claimed that this incident was to ``* * * protest the U.S. support of Israeli massacre of Palestinian People.''

During the evening of December 31, 1982, four powerful bombs detonated in New York City outside police and federal buildings. Three police officers were maimed by the blasts and considerable property damage resulted. A fifth device was disarmed by the police and was found to consist of four sticks of dynamite and components similar to those used in previous FALN devices. The FALN telephonically claimed credit for the bombings. Various people familiar with fugitive Luis Rosado-Ayala subsequently identified the voice of the FALN caller as that of Rosado. Based on this a warrant was issued for Rosado in the Eastern District of New York charging him with Conspiracy to Engage in Racketeering (Title 18, U.S. Code, Section 1962(D)) in conjunction with the bombings.

On May 26, 1983, William Morales, the maimed FALN member who escaped from custody in New York in 1979 after being convicted of various explosives violations in connection with the explosion of the New York ``bomb factory'' in 1978, was arrested by Mexican authorities in Puebla, Mexico. During the arrest Morales' bodyguard and one police officer were killed and a second police officer wounded. Morales subsequently led Mexican officials to a place where he had been staying. Another gun battle erupted at this location when police attempted to enter same and a female resident was killed and a police officer wounded. Although U.S. authorities desire Morales be extradited to New York, Mexican authorities have charged him with four major violations carrying prison sentences of five or more years, consequently it appears that Morales will remain in Mexican custody for many years.

In summary, the following information has been developed concerning the operations of the FALN:

The members are totally dedicated and have expressed a willingness to spend the remainder of their lives in prison if captured during their terrorist activities. This is not to suggest that members will passively submit to arrest. Indeed, if escape is believed possible, FALN members will use deadly force to avoid apprehension.

Membership in the FALN is not a fact that members make public. It is logical to believe that few people within the Puerto Rican independence movement are even aware of the membership of the FALN. Members usually function as apparent law-abiding citizens maintaining residences, families, and legitimate employments while covertly operating in clandestine, criminal operations. It is not until positively identified as FALN members that such people vanish into full-time clandestine ``underground'' existences.

The group believes that the liberation of Puerto Rico is the paramount aspect of their lives and that anything designed to foster this objective is proper and correct. Armed robberies whether they be of business establishments or of common people are justified if they bring into the organization the funds, vehicles, weapons, and other

supplies necessary to bring about the revolution. In the past the FALN has taken advantage of naive clergymen especially people connected with the Episcopal Church, and there is every reason to believe that they will in future attempt to glean funds, supplies, and other support through religious institutions. The father of Carlos Torres is the Rev. Jose Torres of Chicago's First Congregational Church.

Security is of the utmost importance and great care is exercised to maintain confidentiality of the group's operations. Although in the early days FALN members tended to be somewhat careless in their false documentation, safe housing, and other activities, such does not seem to be the case today, and their present false identification will likely stand all but very extensive scrutiny. If arrested, FALN members will almost certainly not cooperate regardless of promises offered to them. Arrested FALN members know that when their cohorts, both overt and covert, learn of their incarceration, assistance in terms of finances, attorneys, and supporters will be made readily available to them. While such people know that escape from custody may not be immediately possible, such an option will remain open throughout their incarceration, and they know that when the opportunity for success is greatest, necessary assistance will be available to them.

The Chairman. Thank you, Mr. Wofford.
Mr. Hahn.

STATEMENT OF RICHARD S. HAHN

Mr. Hahn. Good morning, Chairman, Mrs. Feinstein, gentlemen. My name is Richard Hahn. I am a retired special agent of the FBI. From January 1975 through September of 1987, I was involved almost exclusively in Puerto Rican terrorist investigations. I served in New York for 3 years and first became involved in the FALN investigations with the bombing of Fraunces Tavern, and then went to Puerto Rico where I became that office's bombing coordinator, saw the emergence of several other groups, including the Macheteros, who ultimately claimed credit jointly with FALN actions. In December 1980, I was transferred to the Chicago office where there, until 1987, I worked FALN cases.

Between June 1975 and November 1979, the FALN claimed credit for 19 bombings and six incendiary attacks in the Chicago area. These included bomb targets such as a women's washroom in a hotel restaurant, the bombing of the city-county building, and the bombing of offices at the Sears Tower. These bombings, credit for which was claimed by written communiques or telephone calls, were frequently coordinated with bombings in New York and eventually with actions on the island of Puerto Rico. The communiques claiming credit for these stated such things as ``a free and socialist Puerto Rico, if necessary, will be written in blood,'' and that attempts to suppress the offensive of the FALN would be met with ``revolutionary violence.''

While initially law enforcement was unable to identify the FALN, in late 1976 a bomb factory was discovered in Chicago which was found to be controlled by Carlos Torres and Oscar Lopez, two FALN leaders. Explosives tied to FALN bombings and FALN communiques were found in that bomb factory.

The next event in which FALN members were identified was in January--I am sorry, in April 1980, when 11 FALN members were arrested in Evanston, Illinois. Nine of those members were in a van with 13 weapons. Of those 11 arrested at that time, one FALN member, following conviction on Federal charges--and I would add that the Federal charges were not only of seditious conspiracy but also substantive weapons and explosives charges. One of those members, Freddie Mendez, cooperated with the Government. Mr. Mendez identifies his co-conspirators as having

gone with him to do the Carter-Mondale assault where they went into the offices of the Carter-Mondale campaign and took hostages, held people at gunpoint, stole the list of delegates to the convention, and sent threatening letters subsequently to many of those delegates.

He also describes how he and his co-conspirators went into the Oak Creek Armory in Wisconsin, the National Guard Armory, held people at gunpoint and attempted to steal weapons from the armory vault.

Mrs. Feinstein, you mentioned the remarks of Mr. Jimenez. One of the things that Mr. Mendez testified to at trial was the fact that he and Mr. Jimenez together carried a bomb on public transportation throughout the city of Chicago to place it at a particular target. Mr. Mendez did not stay with Mr. Jimenez when he actually placed the bomb. When they arrived at the target, they were not allowed access to the bathroom that they intended to put it in. So Mr. Jimenez dismissed Mr. Mendez and sent him on his way.

The FALN's assertions that these people are not violent are ludicrous. They are repugnant to those of us that worked on these cases.

In 1983, the FALN was penetrated at a safe house in Chicago; 24 pounds of dynamite, 24 detonators, several weapons, and thousands of rounds of ammunition were found and neutralized by the FBI and other law enforcement agencies. The individuals that controlled that safe house--Edwin Cortes, Alejandrina Torres, and, subsequently, Alberto Rodriguez--were observed building firing circuits for explosive devices, were observed making plans to break fellow FALN members out of prison, were observed and recorded making plans to do an armed robbery, and were observed and recorded making plans to put down bombs in the city of Chicago.

The only reason that any of those acts were not committed was only through law enforcement intervention. I would submit to you that of the hundreds of thousands of hours spent by law enforcement in order to solve these crimes, in order to try and identify the individuals, that the few times that we have, in fact, succeeded in knowing exactly who the FALN is and knowing exactly what their activities are, they are, in fact, quite violent and that these people are, in fact, terrorists.

Thank you.

[The prepared statement of Mr. Hahn follows:]

Prepared Statement of Richard S. Hahn

I, Richard S. Hahn, am a retired FBI Special Agent. During the period of January, 1975, through September, 1987, I was involved almost exclusively in the investigation of Puerto Rican terrorist matters. I served in New York, San Juan and Chicago during this period. While in New York I investigated bombings conducted by the FALN, beginning with the bombing of Fraunce's Tavern on January 24, 1975. From January 1978 through December 1980 I served in San Juan as that office's bombing coordinator. My experiences there saw the emergence of the Macheteros as well as other groups. From January 1981 through September 1987 I served in Chicago as one of several case agents for FALN investigations.

Between June, 1975 and November, 1979, the FALN claimed credit for nineteen bombing and six incendiary attacks in the Chicago area. These included bomb targets such as the woman's washroom in a hotel restaurant, (9/76), the bombing of the city-county building, (6/77), and Sears Tower (10/75). These bombings, credit for which was claimed by written communiqué or telephone calls, were frequently coordinated with bombings in New York, and eventually with actions on the island of Puerto Rico. The communiqués stated such things as ``a free and socialist Puerto Rico, if necessary, will be written in red blood'' and

``attempts to suppress it's offensive would be met with ``revolutionary violence.''

While initially law enforcement was unable to identify the FALN, in late 1976 a ``bomb factory'' was discovered in Chicago. This led to identification of Carlos Torres and Oscar Lopez as persons who controlled an apartment in which explosives tied to FALN bombings and FALN communiques were found.

In January, 1980, the FALN conducted an armed assault on the Oak Creek National Guard Armory in Wisconsin. Employees were threatened at gunpoint and one round was discharged in an unsuccessful effort to obtain access to the weapons vault.

In March, 1980 the FALN conducted a takeover of the Carter-Mondale campaign headquarters. Workers in that office were held at gunpoint while the office was ransacked and spray painted. Lists of delegates to the convention were stolen and threatening letters subsequently were mailed to many of them.

On April 4, 1980, eleven FALN members were captured in Evanston, Illinois as they were preparing to conduct an armed robbery of an armored car. Among those arrested was Carlos Alberto Torres, renter of the bomb factory found in 1976. Also among those arrested was Freddie Mendez, a relatively new recruit to the FALN. The arrests led to the location of numerous safehouses through out the U.S. including those in Milwaukee, Wisconsin and Newark, N.J. Searches of these safehouses yielded weapons and explosives and bomb paraphernalia tied to the claimed FALN bombings. Mr. Mendez, along with nine other FALN members, was tried and convicted of seditious conspiracy. Throughout the trial the FALN members refused to participate in the proceedings, claiming that the U.S. Government had no authority over them.

Following his conviction, but prior to sentencing, Mr. Mendez reached out for U.S. Government authorities. Mr. Mendez subsequently cooperated with the government and provided significant insight into the operation of the FALN. Mr. Mendez identified each of his co-defendants as individuals who participated in armed terrorist actions and/or the manufacture/delivery of FALN bombs.

It is Mr. Mendez testimony that identifies the purpose of the gathering of the FALN members in Evanston on April 4, 1980, as well as the actions at Carter-Mondale Headquarters and the Oak Creek National Guard Armory.

In addition to his experiences in armed assaults, Mr. Mendez also provided testimony regarding being tasked, with one other FALN member, Ricardo Jimenez, to place a bomb. Although Mr. Mendez did not ultimately participate in the placing of the device, he did travel on public transportation through Chicago with Jimenez and the live device to the intended target. As they arrived at the target late, they were unable to place the device there, and Jimenez dismissed Mendez, stating that he would take care of the matter. Mendez testified that Jimenez told him that he put the device in the washroom of a building.

Mr. Mendez also provided information as to the functioning of the FALN. He described the FALN in court as a clandestine, revolutionary Puerto Rican organization whose goal was to build a peoples war in Puerto Rico and the U.S. through armed violence. Mr. Mendez also described in testimony, details of the rigors of clandestine operations, designed to preclude one member from knowing the activities of more than just a few others, in order to minimize risk from infiltration or government cooperation. He provided details regarding the training he received in counter surveillance techniques, maintenance of a safehouse, false identification and disguises.

Between December 1981 and January, 1983, various agencies of Chicago law enforcement worked cooperatively to surveil FALN suspect Edwin Cortes. This led to the identification of an active FALN safehouse maintained by Cortes and Alejandrina Torres in an apartment at 736 W. Buena Street, Chicago. Shortly after the identification of the specific safehouse apartment, the government sought, and was granted Title III authority to place microphones in the apartment as well as to establish video surveillance within the apartment. These

were established in January, and February, 1983, respectively. On March 8, 1983, Cortes and Torres were observed via the video surveillance, cleaning and loading weapons and subsequently building firing circuits for explosive devices. A search of the apartment after the subjects had left yielded approximately 24 pounds of dynamite, 24 blasting caps, weapons, disguises, false identification and thousands of rounds of ammunition. Law enforcement sought and was granted court authorization to neutralize and/or seize the weapons and explosives, and maintain notice of the searches under seal. Subsequently, law enforcement intercepted conversations between Edwin Cortes and still unidentified co-conspirators in New York to arrange for the travel of an unknown individual to Chicago. On or about March 14, 1983, after several conversations with the unknown conspirators in New York, Cortes picked up a man at the airport and transported him to the safehouse. The man, referred to as Benjamin, remains unidentified. Thereafter, Cortes, and ``Benjamin'' met at the safehouse. They were joined by Torres and were seen gathering the weapons and other materials in the safehouse, and subsequently loading bags with materials into two vehicles, one a stolen vehicle, the other a vehicle registered in a fictitious name, and departing the safehouse apartment in the early AM hours of March 15th. Prior to leaving the safehouse Cortes made the comment to Torres that ``Yes but, she has to have it loaded and cocked further back. If they have to shoot, they can shoot.''

On March 18, 1983, as a result of analysis of Title III intercepts in the Chicago safehouse, law enforcement established a surveillance outside of the ambulance entrance to Wadsworth VA hospital, where FALN leader Oscar Lopez was to be taken that date. Lopez had complained of a malady and had been notified well in advance that he would be taken to the hospital for tests on that date. The surveillance observed Torres, Cortes and ``Benjamin'' moving about the ambulance entrance for over an hour, all wearing disguises. During this time, Oscar Lopez was precluded from leaving Leavenworth Prison and the ambulance which would normally arrive at the hospital in the morning hours never did arrive, due to law enforcement intervention. Eventually, Cortes, Torres and ``Benjamin'' left the hospital area and were surveilled to an apartment in Kansas City which had been rented in a false name. A fingerprint of Alberto Rodriguez was subsequently located on an item in this apartment.

On March 19, 1983, Cortes and ``Benjamin'' returned to the Chicago safehouse at 736 W. Buena Street. While there they were observed on video studying maps of the city of Pontiac, Illinois and Livingston County. FALN member Luis Rosa captured at Highland Park, Illinois following a robbery/kidnapping, was incarcerated at Pontiac State Prison. ``Benjamin'' subsequently left, returning to Puerto Rico. On March 22, 1983, Luis Rosa was moved from Pontiac Prison to Joliet State Prison. The next day Torres and an unidentified female travelled to the Bloomington, Illinois area, not far from Pontiac, Illinois. There, they rented an apartment under a false name. Later that same evening a telephone call between Cortes and Torres was intercepted on the Buena safehouse phone. In the conversation Cortes and Torres were overheard complaining about the ``changes'' made the day before.

In March, 1983, Chicago law enforcement located a second Chicago FALN safehouse located on Lunt Avenue. Edwin Cortes and FALN member Alberto Rodriguez were observed to meet there. This apartment was also penetrated with court authorized microphones and video equipment. Through intercepts at this location it was determined that they were developing plans to rob a Chicago Transit Authority (CTA), mobile safe operator of the daily collections. Cortes was subsequently observed conducting a surveillance at one of the CTA stops. In intercepted conversations between the two, the topic of whether or not underpaid guards would risk their lives was discussed. Escape routes and advantages of conducting the robbery at different potential sites was also discussed. In a May 15, 1983 conversation Alberto Rodriguez was overheard discussing ways of confronting the guard, stating they may have to ``hit him upside the head'' and that they may have to ``shoot

the guard, which makes a noise.'' This plot was also diffused by Chicago law enforcement who confronted and obtained Identification from Rodriguez as he conducted a surveillance of a CTA station on March 16, 1983.

On May 27, 1983, Edwin Cortes and Alberto Rodriguez were observed moving materials from the Buena Street safehouse to the Lunt Avenue safehouse. Following the move the two were observed driving around military facilities at Foster and Kedzie, Devon and Kedzie and 74th and Pulaski in Chicago. In early June, 1983, they were observed in the Lunt apartment working with the bomb building paraphernalia previously observed at the Buena Street safehouse. During this meeting Cortes instructed Alberto Rodriguez in how to assemble a firing circuit for an improvised explosive device. In addition to working with the bomb building paraphernalia, they were overheard discussing in detail the physical layout of the Army Reserve Center and GSA facility at 74th and Pulaski, Chicago and talking about the military sites, Cortes wondering aloud how to cause the greatest incendiary damage to vehicles there. Following this meeting they again were observed conducting surveillances of a Marine base, the Army Reserve Center and two military motor pools.

On June 26, 1983, Cortes met Rodriguez at the Lunt safehouse. They were observed working with watches, pipe and pipe caps. They also tried on hats and makeup during this meeting.

On June 28, 1983, Cortes inventoried bomb components at the Lunt safehouse. These included blasting caps, dynamite, detonating cord and batteries. He and Torres met at the apartment and prepared a communique. He subsequently met Rodriguez at the apartment, outside of the presence of Torres. With Rodriguez he drew maps and diagrams and wrapped blasting caps and the explosives which law enforcement had inerted.

On June 29, 1983, Cortes, Torres, Alberto Rodriguez, and a fourth defendant, Jose Luis Rodriguez, were arrested. In comments at sentencing Judge George Layton stated, ``One of the strange things about this case is that these defendants didn't accomplish any of their purpose. They didn't succeed in springing Oscar Lopez. They didn't succeed in springing anybody from Pontiac Correctional Center. And they didn't even succeed in planting the bombs. Why? Because in this case, in this court's judgement, represents one of the finest examples of preventive law enforcement that has ever come to this court's attention in the 20-some odd years it has been a judge and in the 20 years before that this Court was a practicing lawyer in criminal cases all over the country. Good, preventive law enforcement succeeded in keeping these defendants from doing what they were going to do. They were going to plant bombs in public buildings during a holiday.''

The co-conspirator(s) in New York and Puerto Rico were never identified.

Luis Rosado, a suspected FALN member from New York, remains a fugitive on state charges in Illinois for the actions taken with Felix Rosa, brother of FALN member Luis Rosa. Rosado failed to appear on 3/13/81.

In 1985 a plot to break FALN leader Oscar Lopez out of prison at Leavenworth Penitentiary was brought to the attention of the FBI by a cooperative witness. In that case co-conspirators were tasked to obtain weapons and explosives for use in the plot. The plot was to involve forcing a helicopter pilot to land in the yard at Leavenworth. As the escape took place, explosive charges were to be used to distract and to deter guards from taking action to prevent the escape. Co-conspirators in that case were audio taped via court authorized intercepts as they purchased what they believed to be explosives to be used in the plot from an FBI undercover agent. One co-conspirator successfully burglarized a gun store near Littleton, Colorado, to obtain weapons for use in the escape. Due to intervention by law enforcement, none of the plans came to fruition.

The Chairman. Thank you, Mr. Hahn. We appreciate that.

Mr. Gallegos, we are honored to have you here as well.

STATEMENT OF GILBERT G. GALLEGOS

Mr. Gallegos. Thank you, Mr. Chairman.

Good morning, Mr. Chairman and distinguished members of the Senate Committee on the Judiciary. My name is Gilbert Gallegos. I am the president of the Fraternal Order of Police, which is the largest police organization in this country, 283,000 members.

The President has recently used his constitutional power to offer clemency for 16 terrorists. Despite the opposition from Federal officials, from law enforcement officers throughout this country, and the victims and the families that were affected and impacted for the rest of their life, despite our efforts, he turned us down. And we requested at least to consult with him, as did the victims. They did not even receive a response, as I did not receive a response.

That was very disappointing with a President who has purported to be pro-law enforcement and anti-crime. Thousands of police officers in this country have stood shoulder to shoulder with our President to make a statement that crime, terrorism, will not be tolerated in this country. But yet when we seek to counsel with him on important issues that impact not only police officers of this country but the millions and millions of potential victims of bombings, indiscriminate violence that has been perpetuated by this organization.

Now, we know that this organization is not a political organization. They are simply a terrorist and criminal organization. They have displayed their power to be criminals. And to say that because somebody wasn't really involved in planting a bomb is ludicrous. That is like saying that an organized group that goes out to rob a bank and the driver doesn't go into the bank to rob the bank, to say that that driver is any less guilty of bank robbery than the people that actually went in to rob the bank.

So the assertion that they are not violent is a slap in the face to the victims and law enforcement and the American people throughout this country.

We know what the crimes are that these people committed. It has been well documented. We have seen the pictures. But what about the crime of deaf ear to the victims and to law enforcement officers who really want to make a statement about how we feel about terrorists and criminals?

And what about the mixed signals that Senator Feinstein asserted that this administration is putting out not only to the American people but to those thousands of potential terrorists out there as to really what the position of the American Government is? And that is exactly what we have done. We have put out a fact out there that we are really not serious about terrorism.

A week before the clemency offer went, it was put out by the President. Secretary of State Madeleine Albright, speaking on the anniversary of the deadly U.S. Embassy bombings in Africa, vowed to wage an all-out war against terrorism. A week later that policy must have changed because we do not have an all-out war against terrorism.

Now should the Secretary of State instead promise to wage an all-out effort to get terrorists to repent, not to be terrorists or not to be violent? It is ludicrous to even think that we can take a position like that.

Consider the recent case of Buford Furrow. We know that he shot up the Jewish community center in California, murdered a U.S. postal employee. His violations of the law, the firearms laws, were very much the same as those members of FALN. Now, is

that man going to receive clemency also?

The administration has put out a mixed signal out there. Are we going to release Mr. McVeigh for the actions that he took? He didn't intend to kill that many people. He wanted to make a political statement. Where does it end, ladies and gentlemen?

And it is very disappointing for law enforcement when we, as I said before, have stood shoulder to shoulder with this President and considered him our friend and tried to influence his decision in the right way, just like his own FBI tried to, his own Bureau of Prisons tried to influence his decision, and he turned a deaf ear to them.

This is not about politics. The votes that were taken in the House and the votes that were taken in the Senate condemned this decision. It was a bipartisan effort, which I applaud, because this is a bipartisan issue. And the American people are made up of Democrats, Republicans, and all other parties in between. And we are made up right now as potential targets of terrorism because tacitly the Government, the President, has said it is OK and perhaps we will even give you a pardon sometime down the road.

And I commend this Judiciary Committee and other committees that are seriously concerned about what action we are taking. We are not doubting the President's authority to make this decision. What we are doubting is the rationale for it and the rationale for not listening to people who have sound advice on this particular issue.

And I think we as the American people have got to take a stand. And on behalf of law enforcement officers throughout this country, we intend on taking a stand on this issue and against terrorists and against criminals who are violent and intend to maim the American people.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Gallegos follows:]

Prepared Statement of Gilbert G. Gallegos

Good morning, Mr. Chairman and distinguished members of the Senate Committee on the Judiciary. My name is Gilbert G. Gallegos, National President of the Grand Lodge, Fraternal Order of Police. The F.O.P. is the nation's largest organization of law enforcement professionals, representing more than 283,000 rank-and-file law enforcement officers in every region of the country.

I had hoped to appear before you today to again urge the President to withdraw his offer of clemency to the sixteen convicted terrorists and members of the Armed Forces of National Liberation, or FALN to use its Spanish initials. Sadly, twelve have already accepted that clemency and eleven are at large once again. We should make no mistake--the President has used his constitutional power to release convicted terrorists, despite the opposition of Federal law enforcement officials, despite the objections from the law enforcement community and despite the pleas of the victims and families of the dead killed in their wave of bomb attacks.

Today, the F.O.P., instead of renewing its call to withdraw an offer of clemency for terrorist bombers, now joins this Senate Committee and all concerned Americans in trying to determine why this decision was made in the hopes that we can ensure that no more murderous criminals will be released so long as they make vague promises to abjure violence when they leave prison.

The F.O.P. strongly supported House Concurrent Resolution 180, offered by Congressman Vito Fossella (R-NY), which passed the House of Representatives last week in an overwhelming and bipartisan vote. Only forty-three members of Congress voted against the resolution for reasons which are unclear to me and virtually every other law enforcement officer in our country. While this resolution, or any other

act of Congress cannot reverse the President's offer, it is important that we make clear to the President the views of the law enforcement community and the American public. Political considerations should never compromise the public safety, and, as the safety of the public has been compromised in this instance, it behooves us to learn why.

Make no mistake, the FALN is a militant terrorist organization with violent, separatist goals. Between 1974 and 1983, the FALN staged a series of bombing attacks on United States political and military targets, mostly in New York City and Chicago. These acts of terrorism claimed the lives of six people, Mr. Chairman. Scores were wounded and some, including three New York City police officers, were permanently maimed by the powerful explosives planted by the FALN.

Let me describe to you a series of bomb attacks which occurred on the evening of 31 December 1982. At close to 9:30 pm, a powerful explosion rocked the building at 26 Federal Plaza. Members of the New York City bomb squad arrived on the scene minutes later and just as they began their investigation, a second explosion, the blast of which could be felt blocks away, occurred at the Brooklyn Federal Courthouse. And the night was just beginning.

Moments later a third explosion ripped into police headquarters at One Police Plaza. The blast was so powerful that it blew out the heavy glass and frame of a revolving door. This bomb, however, did more than several thousands of dollars worth of structural damage to a government building. This blast hit Detective Rocco Pascarella, blowing away most of his left side. Detective Pascarella survived the blast, but he lost his left leg, his left ear and his left eye.

Detectives Anthony S. Senft and Richard Pastorella of the New York City Police Department, who had been on the scene to investigate the aftermath of the earlier blasts now realized that there were more bombs in the area. The streets were clogged with New Year's Eve revelers, many of whom did not speak English and did not recognize the plain-clothes detectives as police. Many of these innocent by-standers had to be bodily removed from the scene.

With much precious time having elapsed, the two detectives prepared to disarm one of the bombs. It went off in their face.

Detective Senft was blown backward eighteen feet into the air. He found himself blind and deaf with a fractured right hip, his face riddled with concrete, metal and other debris. Extensive surgery eventually allowed Detective Senft to recover some of the sight in his left eye and some of the hearing in his left ear.

Detective Pastorella, was not so lucky. The explosion tossed him twenty-five feet, blew off all the fingers on his right hand and left him blind in both eyes. He has had thirteen major operations and twenty titanium screws inserted just to hold his face together.

While most people watched the ball drop in Times Square or on their television sets, these three officers were fighting for their lives in emergency surgery.

It is true that none of the sixteen terrorists offered clemency by President Clinton were convicted of placing any of the bombs that ripped through New York City on that tragic New Year's Eve. Yet the claims of this White House that none of them were involved in violence, nor directly involved in any deaths or injuries is not only false and self-serving, but a slap in the face to the families of the six dead and the scores of wounded and maimed victims. Law enforcement officials worked hard to get these terrorists behind bars--not to extract a promise from them to swear off their evil ways and send them on their way. It might be remembered that the wave of violence and murder which ruled Chicago ended when Al Capone was convicted of tax evasion, just as the wave of bombing attacks in the United States ended when these sixteen were imprisoned. Should Al Capone also have been granted clemency because he was ``not directly involved'' with any deaths?

Let me review for the record the names and crimes of these sixteen terrorists and then allow you to judge for yourselves whether or not these individuals were ``not involved'' with the violent acts of the group they formed.

Elizam Escobar, convicted on 18 February 1981 of seditious conspiracy (18 U.S.C. 2384), interference with interstate commerce by threats or violence (18 U.S.C. 1951), possession of an unregistered firearm (18 U.S.C. 5861(d)), carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(b)), interstate transportation of firearms with the intent to commit seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(c)) and interstate transportation of a stolen vehicle (18 U.S.C. 2312);

Escobar was sentenced to sixty years, and has been released. The President commuted his total effective sentence to less than twenty-five years.

Ricardo Jimenez, convicted on 18 February 1981 of seditious conspiracy (18 U.S.C. 2384), interference with interstate commerce by threats or violence (18 U.S.C. 1951), possession of an unregistered firearm (18 U.S.C. 5861(d)), carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(b)), interstate transportation of firearms with the intent to commit seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(c)) and interstate transportation of a stolen vehicle (18 U.S.C. 2312);

Jimenez was sentenced to ninety years, and has been released. The President commuted his total effective sentence to twenty-five years.

Adolfo Maltos, convicted on 18 February 1981 of seditious conspiracy (18 U.S.C. 2384), interference with interstate commerce by threats or violence (18 U.S.C. 1951), possession of an unregistered firearm (18 U.S.C. 5861(d)), carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(b)), interstate transportation of firearms with the intent to commit seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(c)) and interstate transportation of a stolen vehicle (18 U.S.C. 2312);

Maltos was sentenced to seventy years, and has been released. The President commuted his total effective sentence to less than twenty-five years.

Dylcia Noemi Pagan, convicted on 18 February 1981 of seditious conspiracy (18 U.S.C. 2384), interference with interstate commerce by threats or violence (18 U.S.C. 1951), possession of an unregistered firearm (18 U.S.C. 5861(d)), carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(b)), interstate transportation of firearms with the intent to commit seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(c)) and interstate transportation of a stolen vehicle (18 U.S.C. 2312);

Pagan was sentenced to fifty-five years, and has been released. The President commuted her total effective sentence to twenty-six years.

Alicia Rodriguez, convicted on 18 February 1981 of seditious conspiracy (18 U.S.C. 2384), interference with interstate commerce by threats or violence (18 U.S.C. 1951), possession of an unregistered firearm (18 U.S.C. 5861(d)), carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(b)),

interstate transportation of firearms with the intent to commit seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(c)) and interstate transportation of a stolen vehicle (18 U.S.C. 2312);

Alicia Rodriguez was sentenced to fifty-five years, and has been released. The President commuted her total effective sentence to four years.

Ida Luz Rodriguez, convicted on 18 February 1981 of seditious conspiracy (18 U.S.C. 2384), interference with interstate commerce by threats or violence (18 U.S.C. 1951), possession of an unregistered firearm (18 U.S.C. 5861(d)), carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(b)), interstate transportation of firearms with the intent to commit seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(c)) and interstate transportation of a stolen vehicle (18 U.S.C. 2312);

Ida Luz Rodriguez was sentenced to seventy-five years, and has been released. The President commuted her total effective sentence to twenty-three years.

Luis Rosa, convicted on 18 February 1981 of seditious conspiracy (18 U.S.C. 2384), interference with interstate commerce by threats or violence (18 U.S.C. 1951), possession of an unregistered firearm (18 U.S.C. 5861(d)), carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(b)), interstate transportation of firearms with the intent to commit seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(c)), and interstate transportation of a stolen vehicle (18 U.S.C. 2312);

Rosa was sentenced to seventy-five years, and has been released. The President commuted his total effective sentence to less than five years.

Carmen Valentin, convicted on 18 February 1981 of seditious conspiracy (18 U.S.C. 2384), interference with interstate commerce by threats or violence (18 U.S.C. 1951), possession of an unregistered firearm (18 U.S.C. 5861(d)), carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(b)), interstate transportation of firearms with the intent to commit seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(c)), and interstate transportation of a stolen vehicle (18 U.S.C. 2312);

Valentin was sentenced to ninety years, and has been released. The President commuted her total effective sentence to less than twenty-five years.

Alberto Rodriguez, convicted on 4 October 1985 of seditious conspiracy (18 U.S.C. 2384), conspiracy to make destructive devices (18 U.S.C. 371 and 26 U.S.C. 5861(f)), possession of an unregistered firearm (18 U.S.C. 5861(d)), possession of a firearm without a serial number (26 U.S.C. 5861(i)), and conspiracy to obstruct interstate commerce by robbery (18 U.S.C. 1951);

Alberto Rodriguez was sentenced to thirty-five years, and has been released. The President commuted his total effective sentence to twenty-six years.

Alejandrina Torres, convicted on 4 October 1985 of seditious conspiracy (18 U.S.C. 2384), possession of an unregistered firearm (18 U.S.C. 5861(d)), conspiracy to make destructive devices (18 U.S.C. 371 and 26 U.S.C. 5861(f)), unlawful storage of explosives (18 U.S.C. 842(j)), and interstate transportation of a stolen vehicle (18 U.S.C. 2312);

Torres was sentenced to thirty-five years, and has been released. The President commuted her total effective sentence to twenty-six years.

Edwin Cortes, convicted on 4 October 1985 of seditious conspiracy (18 U.S.C. 2384), possession of an unregistered firearm (18 U.S.C. 5861(d)), conspiracy to make destructive devices (18 U.S.C. 371 and 26 U.S.C. 5861(f)), unlawful storage of explosives (18 U.S.C. 842(j)), interstate transportation of a stolen vehicle (18 U.S.C. 2312), possession of a firearm without a serial number (26 U.S.C. 5861(i)) and conspiracy to obstruct interstate commerce by robbery (18 U.S.C. 1951);

Cortes was sentenced to thirty-five years, and has been released. The President has commuted his total effective sentence to twenty-six years.

Juan Enrique Segarra-Palmer, was convicted on 15 June 1989 of robbery of bank funds (18 U.S.C. 2113(a)), transportation of stolen money in interstate and foreign commerce (18 U.S.C. 2314), conspiracy to interfere in interstate commerce by robbery (18 U.S.C. 1951), interference with interstate commerce by robbery (18 U.S.C. 1951), and conspiracy to rob Federally insured bank funds, commit a theft from an interstate shipment, and transport stolen money in interstate and foreign commerce (18 U.S.C. 371);

Segarra-Palmer was sentenced to fifty-five years and a \$500,000 fine. He has been released and the unpaid balance of his fine waived. The President commuted his total effective sentence to less than thirty years.

Roberto Maldonado-Rivera, was convicted on 9 June 1989 of conspiracy to rob Federally insured bank funds, commit a theft from an interstate shipment, and transport stolen money in interstate and foreign commerce (18 U.S.C. 371);

Maldonado-Rivera was sentenced to five years in prison and a \$100,000 fine. The President has waived the unpaid balance of this fine.

Norman Ramirez-Talavera, was convicted on 9 June 1989 of conspiracy to rob Federally insured bank funds, commit a theft from an interstate shipment, and transport stolen money in interstate and foreign commerce (18 U.S.C. 371);

Maldonado-Rivera was sentenced to five years in prison and a \$50,000 fine. The President has waived the unpaid balance of this fine.

Oscar Lopez-Rivera, was convicted on 11 August 1981 of seditious conspiracy (18 U.S.C. 2384), interference with interstate commerce by threats or violence (18 U.S.C. 1951), possession of an unregistered firearm (18 U.S.C. 5861(d)), carrying firearms during the commission of seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(b)), interstate transportation of firearms with the intent to commit seditious conspiracy and interference with interstate commerce by violence (18 U.S.C. 924(c)) and interstate transportation of a stolen vehicle (18 U.S.C. 2312);

Oscar Lopez-Rivera, was convicted a second time, on 26 February 1988 of conspiracy to escape, to transport explosives with intent to kill and injure people, and to destroy government buildings and property (18 U.S.C. 371 and 1952(a)(3)), aiding and abetting travel in interstate commerce to carry on arson (18 U.S.C. 2 and 1952(a)(3), and using a telephone to carry on arson (18 U.S.C. 1952(a)(3));

Lopez was sentenced to fifty-five years and fifteen years, respectively. He has rejected the offer of clemency, which would commute his total effective sentence from seventy to forty-four years.

Antonio Camacho-Negron, was convicted on 9 June 1989 of foreign transportation of stolen money (18 U.S.C. 2314), and conspiracy to rob Federally insured bank funds, commit a theft from an interstate shipment, and transport stolen money in interstate and foreign commerce (18 U.S.C. 371);

Camacho-Negron was sentenced to fifteen years and a \$100,000 fine. He was released on parole after serving some time, but returned to prison in February 1998 for again becoming active in the FALN. He has rejected the President's offer of clemency, which would have remitted the unpaid balance of his fine.

As I mention here, the last two did not accept the President's offer. While we can all be grateful that there are two less terrorists on the streets than the President wanted, the very fact that they were given the opportunity to reject such an offer is a slap in the face to law enforcement officers everywhere.

President Clinton offered these terrorists clemency on 11 August and attached certain conditions to their release. First, each must submit a signed written statement requesting the commutation of the sentence. They must agree to abide by all conditions of release imposed by law or the Parole Commission, and renounce the use or threatened use of violence for any purpose.

It took them almost a month to agree to these terms. Why? Perhaps because they were negotiating a better deal. This in and of itself is astounding--that Federal inmates accused of such serious crimes were in a position to negotiate with the White House about the terms of their release. While the specifics of those negotiations remain unknown, I wonder what conditions they objected to. Did they not wish to renounce violence as the means through which to achieve their separatists goals?

Let us examine for a moment, the crimes for which these terrorists were convicted, because, as the President reminds us, none of the above were convicted of killing or injuring anyone. The first and most serious crime is seditious conspiracy. At one time in United States history, sedition and seditious conspiracy, which is plotting against or carrying out acts of war or sabotage against the United States, was a hanging offense. In 1942, by order of President Roosevelt, eight men were arrested, tried and executed for seditious conspiracy and sabotage. Now, fifty years later, sentences of less than twenty years are viewed as too harsh.

Other offenses for which these violent would-be revolutionaries were convicted include a variety of explosive and firearms offenses. This Administration cannot seem to decide what message to send--it has continually pushed for new gun control laws, has utterly failed to enforce the ones on the books and now, it seems, it is willing to grant clemency even to those offenders who commit those crimes. In my opinion, the more we examine this case the less it makes sense.

A week prior to the offer of clemency for these terrorists, Secretary of State Madeline Albright, speaking on the anniversary of the deadly U.S. Embassy bombings in Africa, vowed to wage an all-out war against terrorism. Did that policy change in just a week? Should our Secretary of State have instead promised to wage an all-out effort to get terrorists to promise to renounce violence?

What message are we sending to terrorists--domestic and foreign, and what message are we sending to those violating our gun laws?

Buford O. Furrow, Jr., the man who shot and wounded five at a Jewish Community Center and murdered a U.S. Postal employee was in violation of numerous firearms laws. Yet this has not stopped the Administration or others from pointing to this tragedy to score political points in favor of additional gun control.

Mr. Furrow is a racist who committed this heinous act as, in his words, ``a wake-up call to America to kill Jews.'' His repugnant crimes include many of the same crimes for which the FALN terrorists were convicted--felony possession of a firearm and car jacking to name a few. Will Mr. Furrow be granted clemency next? How were his crimes any different than that of the FALN terrorists? Like Mr. Furrow, they chose specific targets--government buildings and government employees. The 1975 bombing of Fraunces tavern was aimed at businessmen, whom the FALN termed ``imperialistic capitalists,'' whose companies did business with Puerto.

These, too, are crimes of hate--a ``wake-up call'' in a war of nerves between the Federal government and these violent Puerto Rican separatists. The Administration is pushing hate crimes legislation with one hand, and setting free criminals guilty of similar crimes with the other.

Consider the text of S. 1406, a bill introduced by you, Mr. Chairman to combat hate crimes:

`Sec. 249. Interstate travel to commit hate crime

(a) IN GENERAL--A person, whether or not acting under color of law, who--

`(1) travels across a State line or enters or leaves Indian country in order, by force or threat of force, to willfully injure, intimidate, or interfere with, or by force or threat of force to attempt to injure, intimidate, or interfere with, any person because of the person's race, color, religion, or national origin; and

`(2) by force or threat of force, willfully injures, intimidates, or interferes with, or by force or threat of force attempts to willfully injure, intimidate, or interfere with any person because of the person's race, color, religion, or national origin, shall be subject to a penalty under subsection (b).

`(b) PENALTIES--A person described in subsection (a) who is subject to a penalty under this subsection--

`(1) shall be fined under this title, imprisoned not more than 1 year, or both;

`(2) if bodily injury results or if the violation includes the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title, imprisoned not more than 10 years, or both; or

`(3) if death results or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill--

`(A) shall be fined under this title, imprisoned for any term of years or for life, or both; or

`(B) may be sentenced to death.'

These terrorist chose their targets on the basis of national origin. They used firearms and explosives to kill Americans, whom they falsely perceived to be keeping Puerto Rico in colonial bondage. Does the Administration want to punish hate crimes, or release the practioners of hate crimes? If Senator Hatch's legislation were law, they could have been sentenced to death.

The Administration strongly supports S. 622, which also would have resulted in life sentences for these terrorists:

SEC. 4. PROHIBITION OF CERTAIN ACTS OF VIOLENCE.

Section 245 of title 18, United States Code, is amended--

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

(c)(1) Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person--

`(A) shall be imprisoned not more than 10 years, or fined in accordance with this title, or both; and

`(B) shall be imprisoned for any term of years or for life, or fined in accordance with this title, or both if--

`(i) death results from the acts committed in violation of this paragraph; or

`(ii) the acts committed in violation of this paragraph include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

Under Senator Kennedy's legislation, these terrorists, who targeted Americans could have been sentenced to life. Instead, all have been released by the President after serving only a fraction of their sentences.

The President would have us believe that the sentences for the FALN bombers were unusually harsh. The President also noted that human rights leaders like Archbishop Desmond Tutu urged that these criminals had served enough time for their violent crimes. I might remark at this time that Archbishop Tutu also advocates the release of Mumia Abu-Jamal, a convicted cop-killer who murdered Philadelphia Police Officer Daniel Faulkner in 1981. He was convicted in 1982, and had Post-Conviction Relief Act (PCRA) hearings in 1995, 1996 and 1997. On each of those three occasions, the Pennsylvania Supreme Court upheld the conviction and the death sentence. Will he be offered clemency next? Why is it, Mr. Chairman that these so-called ``human rights'' activists are so selective about who is entitled to these rights? What about Danny Faulkner and his widow Maureen? What about Tom and Joe Connor, whose father was killed by the FALN? What about Detectives Pascarella, Senft and Pastorella? Do they not have rights in the view of these advocates? I reject, Mr. Chairman, that there was any injustice in the sentences of these sixteen terrorists and I reject any suggestion that we ought to free those who aim to wage a war of terror to achieve political ends. If this puts me at odds with President Clinton and others, then so be it.

It should also be remembered that President Carter pardoned three Puerto Rican nationalists who were convicted in a 1954 shooting attack on the U.S. House of Representatives that wounded five law makers. Two Congressional pages who were on the floor at the time of the attack were later elected to Congress--the late Bill Emerson (R-MO) and Representative Paul E. Kanjorski (D-PA). A fourth nationalist, convicted of the murder of a Federal law enforcement officer, attempted assassination of President Harry S. Truman and assault with the attempt

to kill in 1950, was also pardoned by President Carter in 1979. We disagreed with President Carter's decision then, as we disagree with President Clinton's now--nationalists whose love of country can only be expressed by shooting sprees, assassination plots and bombing attacks are nothing more than terrorists.

At the time of the President's offer of clemency, Congress was out of session. I, along with nearly four thousand members of the Fraternal Order of Police representing law enforcement officers from every region of the country, were at our 54th Biennial Conference. This Administration seems to have a penchant for making bad decisions when they know media coverage will be scarce.

In any case, in part because of the efforts of the Fraternal Order of Police, the story, once confined to single paragraph Associated Press news bulletins, grew. By the next week, the offer was front page headlines, with news and political commentators speculating that the offer was a calculated attempt to appeal to the 1.3 million voters of Puerto Rican descent in the State of New York, where the First Lady may run for a Senate seat. In my own letter to the President on 18 August, I urged him not to play politics with terrorists and admonished him that releasing violent criminals was no way to gain votes or appeal to racial pride. I have yet to receive an answer or even an acknowledgement of the letter I sent.

By 25 August, the offer of clemency was a national story, prompting the White House to issue a statement: ``There is absolutely no connection between the President's decision here and [the First Lady's] possible campaign.'' Ten days later, the First Lady publicly urged the President to rescind his offer. Of course, the terrorist accepted the offer three days later on 8 September.

Whether or not the offer of clemency was indeed made with the aim of helping the First Lady's potential campaign for the Senate, I cannot say. I can say that I do not understand what possible motive the President could have--releasing terrorist to gain votes for his wife makes no more sense to me than does the claim that it was an attempt to appease ``human rights'' advocates.

The First Lady now acknowledges that she mishandled the issue and should have met with the supporters of the terrorists to explain her opposition before announcing it. This, too, is something I don't understand. Supporters of these terrorists had a sit down meeting with the Attorney General of the United States. The terrorists themselves were permitted a conference call to discuss the President's offer. And yet, like me, the maimed law enforcement officers cannot even get the President or the Department of Justice to acknowledge their letter. This, Mr. Chairman, is a disgrace.

Thus, we are still left with the question--why?

We also must factor into our consideration the clemency process, described by Presidential spokesperson Joe Lockhart as ``painstaking.'' Be that as it may, according to published reports, the clemency offer was opposed by the Federal Bureau of investigation and the former prosecutors, U.S. Attorneys, who brought the cases against these terrorists. The most noteworthy news reports, however, revolve around the position of the Bureau of Prisons, an agency which only very rarely participates in pardon or clemency debates. In this case, they did take a position and recommended strongly against the offer. The reports of the tape recordings on which these bombers discussed a return to their terrorist activities may or may not exist. It is BOP policy to tape record all phone conversations which are not protected by attorney-client privilege, but while the tapes are reviewed, they are not necessarily retained. The truth is, we may never get to hear the tapes.

White House sources have stated that former White House Counsel Charles F.C. Ruff recommended that the clemency be granted. Other news reports reveal that clemency for these terrorist was the top priority of Jeffery Farrow, co-chairman of the President's Interagency Group on Puerto Rico. Mr. Farrow has recently been included in a Congressional probe of potential illegal activities at the Interior Department.

My question is what was so painstaking about the process? That it

took Mr. Farrow from November 1997 to obtain the terrorists' release or the political and public safety ramifications of ignoring the recommendations of Federal law enforcement agencies?

The President has the power to grant clemency and to grant pardons, both are clearly spelled out in the Constitution. There is no Constitutional requirement that the motive be pure or the decision be sound. Former President and Chief Justice William Howard Taft, writing for the Supreme Court in *Ex parte Grossman*, 267, U.S. 87 (1925), noted, "Our Constitution confers this discretion on the highest officer in the nation in confidence that he will not abuse it." I submit to you, Mr. Chairman, that my confidence has been sorely shaken. One can only hope that Timothy McVeigh and Terry Nichols are not also on the President's list of people to pardon before his term ends. Perhaps McVeigh and Nichols were a bit more "successful" by a terrorist's standards, but there is very little difference in the nature of the crimes committed.

And what about William Morales? He is the husband of one of the terrorists released last week by the President and is the self-professed leader of the FALN, described as the "bombing mastermind" behind the group's wave of attacks. In 1979, he was caught and sentenced to 89 years in prison. He served only three months before escaping to Cuba where he now lives in relative luxury along with numerous other violent criminals who have fled this country. Ironically, he is actively applying for amnesty and has asked President Clinton to grant him the freedom to return to the country he once terrorized. This is a man who once expressed that the people left dead as a result of their bombing attacks were "casualties of war." Should he, too, be granted amnesty for his crimes as long as he promises to never, ever bomb anyone again?

Who else, then, is on the President's list for pardons and clemency? The President has exercised this power on only three previous occasions. Once to pardon a perjurer, another time to pardon a person convicted of a marijuana drug offense. The offer of clemency to unrepentant terrorists, though, certainly seems out of place.

I say unrepentant, but perhaps I should say proud. They are proud of their actions. When given the chance to apologize to their victims, when given the chance to disavow the actions that landed them in prison, they refused. Upon their return to Puerto Rico, they were granted, in the words of those who were present a "hero's welcome." Is this the message we want to send? That these terrorists triumphed over their American enemies and returned home victorious? Regrettably, that is precisely what their freedom symbolizes--a victory for terror and a defeat for justice.

Just for the sake of comparison, the President has granted clemency to sixteen terrorist bombers, but not to Officer Robert Couch. Officer Robert Couch, formerly of the Covington, Kentucky Police Department, was engaged in a high-speed pursuit in August of 1989. The driver, who admitted to being suicidal, stopped his vehicle and assaulted the officers who had pursued him. After a fight, the driver was charged with, among other things, assault on a police officer, and found guilty of attempted assault.

A year and a half later, after three grand juries, Officer Couch was indicted for violating the civil rights of the driver and obstruction of justice. They made an example out of him. They wanted to send a message.

Mr. Chairman, no person--and that includes the driver--made complaints of any kind. Despite the indictment, Officer Couch was granted a bond of recognizance and continued to function as a police officer in Covington.

Officer Couch was convicted, but permitted to remain free throughout the appeals process. The "obstruction of justice" conviction was overturned by the Sixth Circuit, but denied the officer a new trial. Following the exhaustion of all legal means, Officer Robert Couch was sentenced to 63 months in prison.

Mr. Chairman, I do not underestimate the situation at all when I

say that this is the very definition of manifest injustice. If there is anyone who ought to be extended an offer of Presidential clemency it is Officer Robert Couch. He is an honorable man and a good law enforcement officer. I cannot understand why the President is pardoning terrorists when the Fraternal Order of Police and thousand of others have written in to support clemency for Officer Couch. The power of the President to grant clemency and issue pardons is supposed to correct injustices, not commit them.

I do not know why the President offered clemency to sixteen Puerto Rican terrorists. I believe that even if I did know why, it would not make any sense to me. Perhaps it was a political maneuver which backfired, or perhaps it was a genuine effort to appease ``human rights'' activists. I do know, however, that the decision was reached and for whatever reason it was decided, it was wrong. Terribly, terribly wrong.

Mr. Chairman, I want to thank you and the other members of this distinguished Committee for inviting me here this morning to offer the views of the Fraternal Order of Police on this matter. I would be pleased to answer any questions you may have for me.

The Chairman. Well, thank you, Mr. Gallegos. We appreciate your testimony.

Dr. Ikuta.

STATEMENT OF REV. DR. C. NOZOMI IKUTA

Rev. Ikuta. Thank you very much. My name is Nozomi Ikuta. I am an ordained minister in the United Church of Christ.

I would like to just take a moment to acknowledge the stories we have heard, very painful ones. I am really deeply grateful for the opportunity to have been able to hear personally from Mr. Pascarella and Mr. Newhall.

I would actually like to take a moment of silence just to extend our hearts and minds to them and their friends and their families and what they have suffered. I would pray that God's spirit would enfold them, and all of us, and guide us in a search for truth and justice and life.

I would like to explain why I personally and the United Church of Christ has been a leading member of the effort to release these men and women from prison. We are certainly aware of the seriousness of their charges: seditious conspiracy, which has been pointed out was the same charge that Nelson Mandela spent so many years in prison for, but also other, more material charges: the possession of firearms, in many cases also explosives, transportation of stolen vehicles across State lines. We know that these are serious charges.

We also know the even more serious things that happened because of FALN activity. We have heard some of these stories. It concerns me greatly, though, to hear members of this body really advocating for a policy of guilt by association.

Now, this isn't a real fancy copy, but it is a copy from the Internet of the U.S. Constitution and Bill of Rights. It is a document that I understood that all of you here had sworn to uphold and protect.

The Fifth Amendment--and you guys are the experts in this--does have this presumption of innocence: ``No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, * * * nor be deprived of life, liberty, or property, without due process of law.''

Senator Hatch, you yourself in your opening arguments talked about the importance of law and the rule of law. And I would ask whether all of us here are ready to abandon that precept just because somebody starts--or a lot of people start using the word ``terrorism'' and generating a lot of fear and

hysteria.

What does it mean to say that none of these people were ever charged or convicted with any of these acts of violence, and yet they should all be given the same charges they were. I would beg of us all to resist the urge to convict these people in a court of public opinion who were never so convicted in any court of law in this United States for the kinds of acts that were described today.

We know terrible things are done by frail and sinful human beings. Terrible things have been done by members of the police, perhaps by members of the Federal Bureau of Investigation in Waco and so forth. But I don't think that anybody would say that every member of any organization should be held liable for every act committed by any member of that organization. I beg of you, I beg of us to protect the constitutional rights that we have held dear for centuries in this country.

Now, really, I am a minister. Mrs. Torres is a member of our church. Carlos Alberto Torres is a member of our church. We hold these people dear. We hold them in our hearts. We believe that the 20 years that they have already served, most of them, more than pay the price for the things that they were indeed found guilty of. And so these are not just any prisoners. We have documentation, ads showing support from all over the religious community, all these Nobel laureates, as Senator Feinstein had named.

And, in closing, I would just like to say that on August 29 I was among the tens of thousands, perhaps a hundred thousand people who marched in Puerto Rico in support of these prisoners. The next morning I went to a bakery near where we were staying, and these were the front-page headlines on every newspaper carried by this little bakery in Puerto Rico. Every single one carried a full-color photo. These folks are clearly not regarded as dangerous. They are not regarded as violent. They are not regarded as terrorists. They have committed themselves to non-violence. They have committed that, many of them to me personally, and certainly all of them have done so publicly, in writing, before the House of Congress and in many other statements.

People do not get this kind of welcome. These are not just Timothy McVeigh. These are people who have been adopted and embraced by all of Puerto Rico, and not just some relatively small percentage that indeed has voted for independence at the polls.

I realize that my time is up. I would just like to say that we do face, I believe, in these days, in the closing days of this century and millennium, a challenge and an opportunity. We can face the future in a spirit of vengeance, or we can face it with hope and reconciliation and love. We can bring the same spirit to Puerto Rico that we brought in the cases of Ireland and Palestine where other prisoners, many of them with many more violent records, were released. It is my prayer that indeed the spirit of love and truth will prevail and guide us all in the coming days.

Thank you.

[The prepared statement of Rev. Ikuta follows:]

Prepared Statement of Rev. Dr. C. Nozomi Ikuta

After hearing and reading of the tragedies which have befallen the victims of FALN bomb blasts, I can only weep with you, and them, for their sufferings. Before I begin my remarks, I would like to ask for a moment of silence, to join our hearts with these victims, to embrace them, and comfort them, after which I would like to offer a prayer.

Let us pray. Holy, holy, holy God; God of power and majesty; God of

love and mercy; we come before you to ask you to send your spirit to us and surround us and enfold us. We ask you to be with all those who suffer from every form of tragedy, especially those who were injured in the FALN bombings, and their families. We ask you to be with them in their pain, even as we ask you to heal them in body and spirit. Be with all of us, we pray; give us a spirit of right understanding, a spirit of truth, a spirit of justice. In the bold name of the One whom we name as Truth and Life. Amen.

To Senator Hatch, Senator Leahy, and the other members of this important body--thank you for allowing me to explain to you why so many of us in the United Church of Christ have come to press so insistently for the release of these Puerto Rican men and women from prison.

As I indicated above, certainly we are aware of some of the terrible sufferings caused by FALN bombings, of people injured, maimed, killed. Health and life are precious gifts of God which, once taken, can never be returned. How could I come before you--as a minister, as a Christian, or simply as a feeling, thinking, human being--and say otherwise?

We are equally aware of the seriousness of the charges for which the men and women who were granted clemency by President Clinton were initially convicted. Seditious conspiracy; possession of firearms, and in some cases, explosives; and interstate transportation of a stolen vehicle--these are the sorts of charges for which I could not pretend that the majority of our members would regard as minor.

Nonetheless, I would ask you--all of us--to resist the hysteria surrounding the news of the release of these men and women from prison. Let us remember President Clinton's explanation--that he found the sentences meted out to these men and women to be excessively and disproportionately long. In making his clemency decision, the President was by no means ignoring the seriousness of the charges for which these men and women were convicted. He was simply recognizing that for charges such as these, the nearly two decades that these women and men have already served in prison are far longer than the sentences usually given out for such offenses.

I have in my hands a copy of the Constitution of the United States of America--a document all of you have sworn to uphold and protect. As you know, Amendment 5 provides--and I quote exactly--that ``No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, * * * nor be deprived of life, liberty, or property, without due process of law.''

You are probably aware that because of their political beliefs, these men and women refused to participate in their own trials, and that this refusal enabled the prosecution to obtain convictions for all the charges it brought. I am not asking you to agree with the course of action that the prisoners took regarding their trials, but only to recognize that if the prosecution had the least bit of evidence connecting the men and women granted clemency by President Clinton to the Fraunces Tavern or other bombing, they could have easily brought charges and obtained convictions in light of the prisoners' refusal to mount a legal self-defense. Instead, the prosecution chose not to charge them with any such activity.

Can I, or anyone, prove unequivocally that the men and women released from prison by President Clinton are completely innocent of the Fraunces Tavern or other bombings? Of course not--any more than I can prove, unequivocally, that anyone of you, present with me here today, are completely innocent of such events.

If we are not to allow this document, the Constitution and Bill of Rights of the United States of America, to become a worthless piece of paper, I beg of you to not to let yourselves be engulfed by the hysteria swirling around us. However sad, however tragic, however horrible the deaths and injuries caused by the Fraunces Tavern bomb--and no one is denying that it was all of those things--let us not be seduced into discarding the truth. The truth is that, unless we are willing to abandon the 5th Amendment and require these men and women to ``answer for a capital, or otherwise infamous crime * * * without due

process of law,' in short, to answer for acts for which they were neither convicted nor charged, we dare not let our emotions about the sufferings of the Fraunces Tavern victims, however valid they may be, to press us, in a thirst for revenge, into holding the men and women released by President Clinton responsible for such acts. As the President noted, these men and women have more than fulfilled any reasonable sentence for the firearms and other charges for which they were actually convicted. I beg of you not to be a party to convicting these men and women in the court of public opinion for crimes for which they were never convicted in a court of law.

Please pardon, if you will, this digression into Constitutional rights. Fundamentally, I am a minister of the church of Jesus Christ, not a student of political science, history, or law. My ministry led me to a job in the United Church of Christ that included responsibility for these prisoners, because two of them--Alejandrina Torres, who was released on September 11, and Carlos Alberto Torres, who remains in prison, having been excluded from the President's offer, have long relationships with our church, and because our General Synod had adopted a resolution in 1991 calling for the release of all of these men and women from prison. Mrs. Torres is the wife of one of our pastors, now retired, and Carlos Alberto is the son of that same pastor. When I decided that I could not carry out this ministry without knowing these prisoners, I began to visit them.

In the course of the last six or seven years, I have visited 10 of the prisoners released by President Clinton's granting of executive clemency, as well as three others who remain behind bars. I must say that meeting them turned out to be one of the extraordinary events of my life. Although they certainly vary in their personalities, they are all very impressive, gifted, people, remarkable in their combination of strength and gentleness. Dozens of church leaders have visited them, and have been uniformly impressed by their character. All of us have come away from these visits convinced that these men and women did not belong behind bars. And we certainly believe their commitments to non-violence, made both to me personally and publically in a statement to the House Resources Committee in 1997, and re-affirmed in the last month.

And now, the moment has come. On August 29, after the President's announcement and before the prisoners' acceptance of his offer, I was among perhaps 100,000 or more people from several different nations and every part of the Puerto Rican religious and political spectrum, calling for the immediate release of these men and women from prison. The next morning, when I went to the bakery near where we stayed, these were the front-page photos carried by all four newspapers sold by that little Puerto Rican bakery. Every single paper told the story--of thousands and thousands and thousands of Puerto Ricans who had braved driving rains to show their support for these men and women.

Last Friday, the Rev. Dr. Paul Sherry, our church's president, and I took part in the reception in Chicago for these prisoners. The mood was of joy and thanksgiving that these women and men would now be reunited with their families. For us, the release of these prisoners is an act blessed by the God of love and reconciliation, for which we give God thanks and praise. So, too, the Puerto Rican people have welcomed and embraced these men and women upon their return home. Such a reception would certainly never be extended to people considered violent or dangerous to their communities.

Esteemed Senators, brothers and sisters--today we face a tremendous challenge and opportunity. As we approach a new century and millennium, we can do so in a spirit of hatred and revenge, seeking to blame certain people for acts in which they were never even implicated, or we can do so in a spirit of reconciliation. It is my prayer that the spirit of love and truth will prevail, and guide us all in the days ahead.

United Church of Christ,
700 Prospect Ave.,
Cleveland, OH, September 7, 1999.

President William Jefferson Clinton,
The White House,
1600 Pennsylvania Ave.,
Washington, DC.

Dear President Clinton: As President of the United Church of Christ, I write to extend our deep appreciation to you for granting executive clemency to Puerto Rican men and women imprisoned because of their acts and beliefs in favor of independence for Puerto Rico.

As you know, along with many other members of our church, I have had the privilege of knowing some of these prisoners personally, and have found them to be of impressive character. They are rich human resources who will greatly benefit their communities upon their release.

We are pleased that you agreed with so many of us--and with international human rights leaders such as Archbishop Desmond Tutu and Coretta Scott King--that the sentences received by these prisoners were excessive and disproportionate, given that they were not convicted, or even accused, of any bombing, injury, or death. With you, we affirm the Constitutional presumption of innocence and insist that these prisoners should not be held guilty by association for violent acts for which they were neither accused nor convicted.

Both in private conversations with members of our church and in public statements issued in 1997 and re-affirmed last week, these prisoners have clearly already renounced violence and stated their commitment to non-violent methods in pursuit of their political goals. We urge you to help make people more aware of this fact as you interpret your clemency decision to the general public.

We stand with the many tens of thousands of our Puerto Rican sisters and brothers, including religious and civic leaders from our church and from every denomination and political party, who marched last week in support of the release of these prisoners. Clearly this remarkable event demonstrates the desire of the Puerto Rican people to welcome the prisoners home.

We, too, eagerly await the return of these men and women. We must note, however, our continuing sadness that Carlos Alberto Torres, Oscar Lopez Rivera, and Juan, Segarra Palmer still face so many more years in prison. Carlos Alberto Torres, who was not granted executive clemency, is the son of one of our ministers, the Rev. Jose A. Torres; our joy will not be complete until he and the other prisoners have also returned home.

Again, please know of our gratitude for granting the release of these men and women from prison. We are anxiously awaiting their return to our communities.

Sincerely,

Paul H. Sherry.

United Church of Christ, The Rev. C. Nozomi Ikuta, Press Contact
News Communication

(For immediate release, September 8, 1999)

RELIGIOUS LEADERS SUPPORT RELEASE OF PRISONERS

CLEVELAND--In response to yesterday's acceptance of President Clinton's offer of executive clemency by 12 men and women being punished for acts and beliefs in favor of independence for Puerto Rico, religious leaders today (Sept. 8) reiterated their support for the prisoners' release.

In a letter to President Clinton, the Rev. Paul H. Sherry, president of the United Church of Christ, said, ``We are pleased that

you agreed with so many of us--and with international human rights leaders such as Archbishop Desmond Tutu and Coretta Scott King--that the sentences received by these prisoners were excessive and disproportionate, given that they were not convicted, or even accused, of any bombing, injury or death. With you, we affirm, the Constitutional presumption of innocence and insist that these prisoners should not be held guilty by association for violent acts for which they were neither accused nor convicted.'

The Archbishop of Puerto Rico, Roberto Gonzalez Nieves, agreed. When the clemency offer was announced, his only criticism was that it didn't go far enough. ``Although as Christians, we should be grateful that the wish of the Puerto Rican people was heard that our brothers and sisters return home, we lament that President Clinton did not grant unconditional freedom to all the political prisoners,' he said (translated from the original Spanish; El Nuevo Di, August 11, available at).

Others said that the prisoners' delay in accepting the President's offer had nothing to do with renouncing violence. In 1997, in a public statement to the House of Representatives, they committed themselves to peaceful means, and they re-affirmed this a few days ago because so many people seemed unaware that this was already their position,' said Bishop Thomas Gumbleton of Detroit, former head of Pax Christi, a Catholic peace organization.

The Rev. Eliezer Valentin-Castanon of the United Methodist General Board for Church and Society referred to last week's march in Puerto Rico in favor of these prisoners, which drew tens of thousands of people, including leaders from every religious denomination and political party. ``This is obviously about peace and reconciliation. You don't get such a broad-based consensus for releasing people who are interested in violence,' he said.

Sherry noted that one of the released prisoners, Alejandrina Torres, is the wife of a United Church of Christ pastor, and that one of the prisoners who would remain in prison is the son of the same pastor. ``For us, this is not only a justice issue; it is also a pastoral one,' he said.

Since 1991, when its General Synod adopted a resolution in favor of release of the prisoners, the United Church of Christ has been involved intensively in this effort ``This issue has been a priority for several years, of our Council for Hispanic Ministries, our staff and many members,' said Sherry. ``We have visited and written to the prisoners, called and written to the White House, published educational resources and participated in numerous protests.'

Sherry also said that he had personally met several of the prisoners. ``More than two dozen leaders of our church have visited them and they really are remarkable people. We are certainly looking forward to welcoming them home,' he said.

The United Church of Christ, with national offices in Cleveland, has more than 1.4 million members in the United States and Puerto Rico and some 6,000 local churches. It was formed by the 1957 union of the Congregational Christian Churches and the Evangelical and Reformed Church.

The Chairman. Thank you, Dr. Ikuta.
The Honorable Cintron Garcia.

STATEMENT OF HON. ANGEL M. CINTRON

Mr. Cintron. Thank you, sir.

Good morning, Mr. Chairman, Mr. Leahy, members of the Committee on the Judiciary of the U.S. Senate, ladies and gentlemen. I am Angel Cintron, Puerto Rico House Republican Majority Leader. First of all, I want to express my gratitude for allowing me to testify before this committee on such short notice.

Today I come before you on behalf of the nearly 4 million

U.S. citizens who reside in Puerto Rico in order to share with you our concerns and our viewpoints regarding the debate that has developed since President Clinton granted a conditional Presidential pardon to a group of prisoners who share one thing in common: membership in terrorist organizations that advocated independence for Puerto Rico.

We are concerned that the debate that has developed on a national level these past few weeks has veered somewhat off track and shed some negative light upon Puerto Rican society as a whole. Therefore, we believe that it is absolutely necessary that we provide Congress and our fellow citizens in the mainland with an opportunity to better appreciate our commitment as a society to the democratic ideals and values embodied in our U.S. Constitution.

Just as the illegal actions of individuals like Timothy McVeigh or by members of anti-government organizations or militia groups do not reflect the democratic viewpoints or approval of our fellow citizens in Oklahoma, Texas, Michigan, or any other State of the Union for that sake, neither do the tactics or the views of any terrorist organization mirror the democratic principles and practices of the people of Puerto Rico.

To assume otherwise is to do great injustice to the law-abiding U.S. citizens of our island. Puerto Rico is a society composed of some 4 million U.S. citizens who value their civil and democratic institutions and resolve their political problems through their vote. Historically, Puerto Ricans have shown a total and absolute repudiation of the use of violence to further political causes.

On the contrary, Puerto Ricans profoundly respect our Government institutions and the rule of law. That is why one can see a steadfast participation of Puerto Ricans in the social, economic, and political development of our Nation.

Many are the thousands of Puerto Ricans who have shed their blood on battlefields in every conflict since World War I, four of whom have been awarded the Congressional Medal of Honor for their heroic actions and for making the ultimate sacrifice in defense of democracy.

Many are the Puerto Ricans who have held or currently hold prominent positions in the political and judicial arena, thus contributing to the development of our Nation, such as Judges Juan Torruella, Jose Cabranes, and Sonia Sotomayor, and former Surgeon General of the United States Antonia Coello de Novello, and former Governors Luis Munoz Marin and Luis Ferre, among many others.

Therefore, it should come as no surprise that Puerto Rico has the highest index of voter participation in all the Nation, with an average of 85 percent in the general elections held every 4 years locally. In this regard, it surpasses and shines as an example of respect towards the electoral process for the rest of the Nation.

It is also noteworthy to point out that for the past 40 years, 97 percent of all voters in Puerto Rico favor the two parties that support permanent union and permanent citizenship with the United States, be it either through statehood or enhanced commonwealth as their preferred political status option. Nonetheless, the remaining 3 percent who support independence advocate their preferred political option through the ballot box and not in any way or fashion through violent means. Therefore, the political process in Puerto Rico plays out well within the spirit and boundaries of the First Amendment of the Constitution of the United States.

It is also important to point out that our Constitution states that a fundamental value of our public life is our devotion to our democratic values, to our U.S. citizenship, and

to peace.

Two nights ago, the House of Representatives of Puerto Rico unanimously approved House Concurrent Resolution 80, which expresses a repudiation on behalf of all the nearly 4 million U.S. citizens who reside in Puerto Rico of any violent or terrorist act committed to further political or social causes.

As I am here today, let me take this opportunity to express our deepest regret for the injuries suffered by Agents Pascarella and Newhall in the line of duty, as well as our thoughts and our prayers to those who lost their lives in the 1975 blast at the Fraunces Tavern and their respective families.

We abhor these kind of violent acts, just as we repudiate the killing of innocent individuals in the Oklahoma City bombing or the killing of ATF agents and many innocent victims in the Waco incident in 1993 or the hate crimes and church fires performed by Skinheads and members of organizations such as the Ku Klux Klan and others.

Let me conclude by urging you to avoid misunderstanding support in our island for the conditional Presidential pardon with any kind of support--I repeat, any kind of support for violent acts or terrorist activities.

I also want to stress that even though a majority of people, numerous religious and civic leaders, and former recipients of the Nobel Prize, support the granting of a conditional Presidential pardon, basically no one in our island--no one in our island--consider them as heroes but, rather, as people that may be deserving of an opportunity to rehabilitate themselves.

Let me reiterate to you there is no place for violent or terrorist-sponsored acts in our society. That is why we should always do our share to prevent such acts from occurring ever again.

On behalf of the Speaker of the House of Representatives in Puerto Rico and also the National Committeeman for the Republican Party, the Honorable Edison Misla, as well as on behalf of all my fellow members of the House, I want to thank you again for the opportunity you have given me this morning. Thank you very much.

[The prepared statement of Mr. Cintron follows:]

Prepared Statement of Hon. Angel M. Cintron

Good morning Mr. Chairman: Mr. Leahy, Members of the Committee on the Judiciary of the United States Senate, ladies and gentlemen. First of all, I want to express my gratitude for allowing me to testify before this Committee on such short notice.

Today, I come before you on behalf of the nearly 4 million U.S. citizens who reside in Puerto Rico in order to share with you our concerns and our viewpoints regarding the debate that has developed since President Clinton granted a conditional presidential pardon to a group of prisoners who share one thing in common: membership in terrorist organizations that advocated independence for Puerto Rico.

We are concerned, that the debate that has developed on a national level these past few weeks, has veered somewhat off-track and shed some negative light upon Puerto Rican society as a whole. Therefore, we believe that it is absolutely necessary that we provide Congress and our fellow citizens in the mainland with an opportunity to better appreciate our commitment as a society to the democratic ideals and values embodied in our U.S. Constitution.

Just as the illegal actions of individuals like Timothy McVeigh or by members of anti-government organizations or militia groups, do not reflect the democratic views or approval of our fellow citizens in Oklahoma, Texas, Michigan, or any other state of the Union for that sake, neither do the tactics or the views of any terrorist organization

mirror the democratic principles and practices of the people of Puerto Rico.

To assume otherwise, is to do great injustice to the law abiding U.S. citizens of our Island. Puerto Rico is a society composed of some four million U.S. citizens who value their civil and democratic institutions and resolve their political problems through their vote. Historically, Puerto Ricans have shown a total and absolute repudiation of the use of violence to further political causes.

On the contrary, Puerto Ricans profoundly respect our government institutions and the rule of law. That is why one can see a steadfast participation of Puerto Ricans in the social, economic, and political development of our Nation.

Many are the thousands of Puerto Ricans who have shed their blood on battlefields in every conflict since World War I, four of whom have been awarded the Congressional Medal of Honor for their heroic actions and for making the ultimate sacrifice in defense of democracy.

Many are the Puerto Ricans who have held or currently hold prominent positions in the political and judicial arena, thus contributing to the development of our Nation, such as Judges Juan Torruella, Jose Cabranes and Sonia Sotomayor, former Surgeon General Antonia Coello de Novello, and former governors Luis Munoz Marin and Luis Ferre, among many others.

Therefore, it should come as no surprise that Puerto Rico has the highest index of voter participation in all the Nation, with an average of 85 percent in the general elections held every four years. In this regard, it surpasses and shines as an example of respect towards the electoral process for the rest of the United States.

It is also noteworthy to point out that for the past forty years, 97 percent of all voters in Puerto Rico favor the two parties that support permanent union and permanent citizenship with the United States, be it either through statehood or enhanced commonwealth as their preferred political status option. Nonetheless, the remaining 3 percent who support independence advocate their preferred political option through the ballot box and not in any way or fashion through violent means. Therefore, the political process in Puerto Rico plays out well within the spirit and boundaries of the First Amendment of the Constitution of the United States.

It is also important to point out that our Constitution states that a fundamental value of our public life is our devotion to our democratic values, to our U.S. citizenship, and to peace.

Two nights ago, the House of Representatives of Puerto Rico unanimously approved House Concurrent Resolution 80, which expresses a repudiation on behalf of all the nearly four million U.S. citizens who reside in Puerto Rico of any violent or terrorist act committed to further political or social causes.

As I am here today, let me take this opportunity to express our deepest regret for the injuries suffered by agents Pascarella and Newhall in the line of duty, as well as our thoughts and our prayers to those who lost their lives in the 1975 blast at the Fraunces Tavern and their respective families.

We abhor these kind of violent acts, just as we repudiate the killing of innocent individuals in the Oklahoma City bombing or the killing of ATF agents and many innocent victims in the Waco incident in 1993 or the hate crimes and church fires performed by Skinheads and members of organizations such as the Ku Klux Klan.

Let me conclude by urging you to avoid misunderstanding support in our Island for the conditional presidential pardon with any kind of support for violent acts or terrorist activities.

I also want to stress that even though a majority of the people of Puerto Rico, numerous religious and civic leaders, and former recipients of the Nobel Prize, support the granting of a conditional presidential pardon, basically no one in our Island consider them as heroes but, rather as people that may be deserving of an opportunity to rehabilitate themselves.

Let me reiterate to you there is no place for violent or terrorist

sponsored acts in our society. That is why we should always do our share to prevent such acts from occurring ever again.

On behalf of the Speaker of the House of Representatives and National Committeeman for the Republican Party of Puerto Rico, the Honorable Edison Misla, as well as on behalf of all my fellow representatives, I want to thank you again for the opportunity you have given me this morning. Thank you very much.

The Chairman. Thank you, Mr. Cintron.

We will put Senator Leahy's statement in the record immediately following my statement, and we will keep the record open for other statements until 5 o'clock today.

Now, Mr. Pascarella and Mr. Newhall, you and other victims of the FALN will carry scars and pains with you the rest of your lives. Witnesses who came forward to help convict these terrorists now live in fear for their safety and their lives, especially now that these people have been set free. And by comparison, the people who supported and perpetrated the violence have their lives back and are free.

Can you and the rest of the panelists, if you wish, comment on whether justice has been served in this case. We'll start with you, Mr. Pascarella.

Mr. Pascarella. Well, I believe, Senator, that I was given a life sentence because of my injuries. If I live to be 150, which I am sure I will not, I will still be an amputee, difficulty seeing and hearing, just even now that I am a grandfather, playing with my grandchildren, it is very difficult.

And it is tough to explain to a little child 2 years old, you know, when they see me, they look at my artificial leg, and they ask, you know, what happened to grandpa? It is a life that I will just have to live with, and it will be very difficult.

The Chairman. Mr. Newhall.

Mr. Newhall. My concern, and I have permanent injuries as well, and, again, I do not really want to go into how they affect me, even though they do every day. But my concern in all of this has been really more for those who were killed and the effects that this has had on their families, which the effects were considerably worse than I think on my family, for lots of different reasons.

But at the time, I did not have children. The three people who were killed with me all had children. Actually, one of them, one of them's wife was pregnant with their first child. The way in which they have been haunted by this is far more lingering and devastating than what I have had to live with.

And there were obviously many others who were injured in this and other bombings who have residual effects that affect them in other ways. But I am concerned more about the dead and what has happened with them and their families personally, and really the larger question of how these terrorist activities have been dealt with and how severely they were considered and are not just dismissed after a certain number of years have passed for lots of complicated reasons. And I know there are a lot of complicated reasons in this.

So whether or not justice has been done, I think justice was probably done in their trials and convictions based on what I have read of court proceedings. The clemency proceeding or the clemency review remains a mystery to me, and I think to most people, which is why you are having this hearing today. I do not know that--I am certainly not opposed to the President making clemency grants when he thinks they are just. It is absolutely his right and power. And I am sure there are wise decisions that have been in the past and more that will be made in the future.

But in certain cases, I think the deliberations are--they

are important for people to know about, know exactly what was behind them so that people do understand that justice and good causes are being served and not politically expedient goals being sought.

The Chairman. Thank you.

Mr. Gallegos. Mr. Chairman.

The Chairman. Yes, Mr. Gallegos.

Mr. Gallegos. I really think that more an injustice has been done. Because the law, as I understand it, regarding victims is that victims of crime are--it is required of the Government to notify the victims of crime whenever such actions are going to be taken by our Government to release criminals back into the street.

And it is my understanding, and I will ask Mr. Newhall, if, in fact, that was done in this case. My understanding from the other detectives was that they were never consulted, the Government never let them know that this action was going to take place, other than what was reported in the newspaper. And so I would assert that there was an injustice because our own Government did not follow the law in notification to victims. And I think that needs to be explored.

The Chairman. Thank you.

Anybody else? Dr. Ikuta.

Rev. Ikuta. I hate to be redundant, but it does seem to me that there is a serious question, at least I have tried to raise it, as to whether these terrible things that have been described are actually people who were victims of any activity that was ever formally connected to anything that was done by the people released from prison. I cannot prove that they never did anything. I cannot prove that any of you or that I did any of these things. It is very difficult to prove innocence. In this country, we are supposed to prove guilt, and that has not been established in the case of these people that have been released from prison.

The Chairman. Well, would you care to respond to that, Mr. Hahn?

Mr. Hahn. Yes, if I can. I would reiterate also that several of the people captured at Evanston with Freddy Mendez, that Mr. Mendez identified them as participating in several of the violent acts, the takeover of Carter-Mondale headquarters, the assault on the national guard armory in Wisconsin, on planting of bombs on at least one occasion, and that the penetration of the FALN safe house in 1983 in Chicago demonstrated, again, that some of these people that are released from prison were building bomb components, were storing bomb components and live explosives, were planning armed escapes from prisons and were planning armed robberies.

There is no question as to the identity of these people involved in those particular acts. It is videotaped, it is audiotaped, and it has been subject to testimony at trial.

The Chairman. Care to add anything, Mr. Wofford? And then I would like to ask just one more question.

Mr. Wofford. He spoke for me. That is fine.

The Chairman. I think Mr. Newhall---

Mr. Newhall. Yes. I just wanted to respond to the Reverend that I do not think anyone here is asserting that these people were directly responsible for the Fraunces Tavern bombing. Mr. Pascarella and I are here merely to recount some of the things that some of the people who are involved in these bombings went through.

But it is very clear from their convictions and the remarks presented by Rick Hahn and Donald exactly what they were convicted of. And that is very straightforward and simple, and I think the statutes are pretty clear on that.

I think it--I also have difficulty making, drawing a

comparison between people like Guillermo Morales and Nelson Mandela, given what they were both charged with. I think that is not really a good parallel.

The Chairman. Let me just ask each of you, and then I will turn to Senator Feinstein, were your views directly sought by the Government or did any of you have the opportunity to meet with DOJ officials or the President prior to this decision on August 11, I believe it was.

Mr. Pascarella.

Mr. Pascarella. Senator Hatch, I did not find out about it until I heard on--my brother-in-law called me up on the phone and said he heard it on the radio about this. And at first, it was the day it came out, I believe was August the 11, and at first I did not believe him. I did not think it would be possible. But before then, I was never contacted by anyone.

The Chairman. Mr. Newhall.

Mr. Newhall. No, I was contacted by no one. And I understand efforts made by Joe Connor, who is the son of Frank Connor, who was killed with me, was killed alongside me, made several attempts to speak with representatives of the White House and was not well received.

The Chairman. Mr. Wofford.

Mr. Wofford. No, I was never contacted. And if I could add real quick, all of the people that have been released, all had a trial, had a jury trial, a judge passed sentence. And to overturn all of that whole process, which is the bedrock of our justice system, just seems to be incredible.

The Chairman. Mr. Hahn.

Mr. Hahn. Yes, I was contacted by the U.S. Attorney's Office in Chicago.

The Chairman. And what was the result of that conversation?

Mr. Hahn. I am not at liberty to----

The Chairman. Did they ask you for your opinion on this?

Mr. Hahn. Yes, they solicited my comments on this, and it was 1994.

The Chairman. That was back in 1994.

Mr. Hahn. That is correct.

The Chairman. But I am talking about immediately prior to this----

Mr. Hahn. No. Since that time, I have not been contacted at all, sir.

The Chairman. I see.

Mr. Gallegos.

Mr. Gallegos. Mr. Chairman, I wrote to the President directly on this, and my letter was hand-carried to the White House, and I have yet to receive a response to anything that I raise in my letter. And it was strange because all of the other letters, since I have been president almost 5 years now of the FOP, have always been responded to by the President. And I was, I have got to say I was very disappointed that no response, no phone call, no consultation, in fact, was even tried by the White House.

The Chairman. I see.

Dr. Ikuta, did you have any contact with anybody in the administration, the White House, the Justice Department or anybody else?

Rev. Ikuta. The president of our church convened a couple of ecumenical meetings to share our views. I would like to add, parenthetically, that recently the African National Congress did submit a support statement for the release of these prisoners. I am not saying that they would necessarily draw an exact parallel between Nelson Mandela. I do not know if there are very many people in the world like him and Guillermo Morales, but the ANC did see fit to support this, as well as the U.N. Special Committee on Decolonization.

Furthermore, just to clarify, it is my understanding that none of these prisoners were ever even charged with planting any explosives. Now, I could be mistaken about that. I was not that close to the legal aspects of this case, but I think that should be made clear.

The Chairman. See, legally, I believe they were charged with conspiracy in the----

Rev. Ikuta. Judicious conspiracy, that is correct.

The Chairman. And that is just as important as having done the act.

Mr. Cintron.

Mr. Cintron. Well, it is my understanding, sir, that we never received any contact from Federal agencies in this matter. But I think it is important to point out that these people or these individuals were not residents of Puerto Rico. They were residents of Chicago, New Jersey and Connecticut. They were born and raised in mainland. They never lived in Puerto Rico for the last 30, 40, 50, 60 years, except for one-- I never remember his name--but except for one, the other ones never, as a fact, most of them never speak Spanish.

The Chairman. Dr. Ikuta, did you personally ever get contacted by the Justice Department or the White House or anybody in the administration? You mentioned that the head of your church did convene an ecumenical council. But I am asking if you, personally, were contacted.

Rev. Ikuta. Obviously, I have done a lot of the staff work in this situation. It is, generally speaking, the head of the communion that the officials prefer to converse with. So I did assist with the preparation of those, and I went along at some of the meetings. I was present.

The Chairman. Was this at the White House?

Rev. Ikuta. Yes.

The Chairman. At Justice, too?

Rev. Ikuta. There was another meeting with the deputy attorney general.

The Chairman. When was that, do you know?

Rev. Ikuta. If memory serves, we met with Mr. Quinn and---- Senator Feinstein. I am sorry. Who did you meet with?

Rev. Ikuta. If memory serves, we met once with Mr. Quinn, Jack Quinn, when he was the White House counsel. We also met with Mr. Ruff. We also met with,--and another--these were all different configurations. I am blurring a lot of things where-- with the deputy attorney general. It is my understanding that the Puerto Rican Congressmen were never allowed to actually meet with President on this issue. So there are different questions of access.

The Chairman. Did you ever meet with the President himself?

Rev. Ikuta. No. Of course, not.

The Chairman. But you did meet with the Justice Department. How late did you meet with him?

Rev. Ikuta. That was with Mr. Holder and Mr. Adams was also present.

The Chairman. When did that occur, approximately?

Rev. Ikuta. It would have been--please do not hold me to this--I would think about 1997. We have been at this for a very long time. People began working for the release of these folks from the day that they were arrested. The pardon petition was filed in 1993. I might add, parenthetically, that the idea, given the way these votes have gone, that the President would have done this out of some sort of political expediency I find not very credible.

The Chairman. I see. Now, Roger Adams, who you mentioned, is the pardon attorney; is that correct?

Rev. Ikuta. Right.

The Chairman. OK. I think my time has long been gone.

Senator Feinstein.

Senator Feinstein. One of the things that disturbs me in all of this is the honing of the truth, I must say this, by those who have supported clemency, and honing it to the point, well, these people really are not guilty of much. I want to do a couple of things. I want to read from the indictments of Alejandrina Torres, Edwin Cortes, and Alberto Rodriguez.

``[O]ppose by force the authority of the Government of the United States by means of force, terror and violence, including the construction and planting of explosive and incendiary devices at banks, stores, office buildings and government buildings. * * * It was a further part of the said conspiracy that the conspirators would claim credit in the name of the FALN for certain * * * bombings through either telephone calls or typed communiques.''

Now, let me translate this into what I understand these three did. They stockpiled dynamite, weapons, blasting caps and bulletproof vests. Together with Rodriguez, they planned to bomb U.S. military facilities in the Chicago area. They cased the facilities. They reviewed a communique to be published in conjunction with the planned bombings. They built bombs containing 21 pounds of dynamite. They also planned to use explosives to free FALN leader Oscar Lopez, who was also offered clemency, from prison, to rob a Chicago Transit Authority facility to fund FALN operations and to harbor another FALN leader who had escaped from prison.

Now, this is the terrorist network, and this is what has to be understood. And when people, you know, cheer them on, they are saying, essentially, this is OK. This is not OK. And I have a very hard time because I think it is this kind of attitude, ``Well, Nelson Mandela did this.''. Different time, different place, do not know all of the circumstances. Or the fighters for an Israeli state did this. Different time, different place, different circumstances. We are talking about a group that, in order to achieve something in another area, is willing to band together to plan how to destroy people in a totally different area, and all of a sudden they are some kind of hero for this. I have a very hard time understanding that.

This is the indictment, and this is what it translates into. Now, how do you say that is not violence?

Rev. Ikuta. For one thing, I do not mean to be technical here, but my understanding here is that indictment is different from a conviction.

But in any case, different times----

Senator Feinstein. They were convicted of these things.

Rev. Ikuta. Different times--excuse me, then. Different times and different places I think is a very important thing. Twenty years have now elapsed. These folks have matured. They understand that the times have very much changed. We are not in the kind of social period of Timor. The turbulence that we were in those days, they, in 1997, long before it looked like clemency was even a real possibility, although many of us were laboring at it, signed a statement indicating their intention to integrate themselves into civic life and so forth.

They have reiterated their commitment to nonviolence in the last few weeks, when it became clear that people had not been aware that they had made that commitment. And, again, I would say we, in the United Church of Christ, and many people in the campaign do not have a consensus that this was just fine. But we are saying that they have spent nearly 20 years in prison for possessing weapons, in some cases possessing explosives. But 20 years is a very long time to spend in prison, especially for people who were not found guilty of concrete acts of destruction.

Senator Feinstein. Would anyone like to comment on that?

Mr. Hahn.

Mr. Hahn. Yes, I would.

I would point out that these people were released without any sort of cooperation on their part to the Government or any contrition to the victims. The significance of that, of course, is the fact that, as the reverend here points out, these people have not been convicted or connected by the government, specifically with the bombings that injured these two victims here, the Fraunces Tavern bombing or the bombings of New Year's Eve, 1982.

The question is has anyone asked them to cooperate? If not, why not? Could they have solved these bombs and specifically told us who put down those bombs? I am at a loss to understand why this Government, this President, did not seek that sort of cooperation from these people to benefit the people of the United States, to benefit these victims.

Senator Feinstein. I think that is a very good point. Are there any other comments on this end?

Mr. Pascarella.

Mr. Pascarella. Well, I would just like to say that--did I--I am a little hard of hearing, did I understand correctly that some people from the group trying to gain clemency for these individuals, met with somebody from Justice or the White House?

Senator Feinstein. Apparently so.

Mr. Pascarella. Oh. Well, if that is the case, then I really think that that has to be the most outrageous thing I have ever heard in my life. Because as a victim, I was never contacted by anyone.

Senator Feinstein. Thank you very much.

The Chairman. I understand only two of them applied for parole, none of them applied for clemency.

Rev. Ikuta. Actually, three applied for parole, sir.

The Chairman. What?

Rev. Ikuta. Three applied for parole.

The Chairman. Three? My understanding was two.

We will go to Senator Sessions now.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator Sessions. Thank you, Mr. Chairman.

Justice in America is a very cornerstone of what we are about, and it troubles me to see so much muddled thinking, really, when we think about it. We have a Constitution, and these individuals, these officers, the police and FBI who risk their lives to penetrate this organization, I bet they file a brief this thick to justify their undercover operations to the Court before they could enter that building.

We protect individual rights, whether you are a citizen or noncitizen, no matter what your belief is, no matter what language you speak. We all have certain constitutional rights here. But it is clear to me, Mr. Chairman, on this question of involvement, that we need to think carefully about it. When a person joins the U.S. Army, the U.S. Senate, the FBI, they are not responsible if there is some rogue Senator who commits a crime. They are not joining an organization committed to murder, crime and theft. This organization was committed to that. They took public credit for the bombing in New York City.

The law is clear on this and real strong, as a matter of fact, with regard to a conspiracy. The Second Circuit, that is a circuit in New York, 1992, ``A defendant who joins a conspiracy incurs liability for the unlawful acts of the conspiracy committed before,`` even before, ``and after they became a member. If they knowingly joined the conspiracy and

knew what it was about, they affirm that and join it morally and legally.'

'A conspiracy * * *'' another case ``* * * is like a train. When a party knowingly steps aboard, he is part of the crew and accepts the responsibility for the existing freight it is already carrying.'

And there are other cases that say that. So, to me, this is just talk about nothing. There was a trial, a jury conviction, affirmments on appeal and affirmed sentence by a judge at a time when I would suspect, and I will ask Mr. Hahn and the other agent, was there intense security about those trials when those cases were tried?

Mr. Hahn. Absolutely.

Senator Sessions. Were the prosecutors considered to be at risk for their life?

Mr. Hahn. I am going to refrain from answering that because I want to stay within the public record.

Senator Sessions. Were the judges provided special protections and security?

Mr. Hahn. Yes, they were.

Senator Sessions. What about the jury?

Mr. Hahn. Yes, they were.

Senator Sessions. This was a very intense life-and-death case, was it not?

Mr. Hahn. It was very intense, yes.

Senator Sessions. I have tried some intense cases, but I can imagine this one would be far beyond anything I have been involved in. And the jury did its duty, the judge imposed a sentence.

And now we have 3,000 petitions for clemency in this country, and the President of the United States grants three until he comes along and grants these. It is beyond my comprehension, and it does raise questions about the integrity of the Justice Department. The Attorney General, in my view, should have told the President of the United States, 'I will not stay in this office if you grant this clemency.' And how the pardon attorney, who recommends denial of 2,000-plus, 3,000 petitions, I am sure every one of them more justifiable than these, could stand in that office and allow it to continue, when this one has been granted. It just undermines the whole basis of law, and it is a deplorable thing of which all but two members of this Senate agreed yesterday in a resolution. So, it is not a close question.

Now, with regard to the church's concern, I think we ought to respect that. But the church has to respect the legal system of the country. And we have an obligation, and these FBI agents and police officers put their--as Mr. Gallegos mentioned--they put their lives on the line on a daily basis, and to have the President, in effect, I suggest, agree, at least in some respect, that this is a political act. They are not granting murders and bombers of other kinds clemency. It is only these who claim they are doing something political. So I say the President has undermined our effort against terrorism and hurt our country's efforts.

Mr. Chairman, I have gone too far. You have done a good job in assuming this panel. And I would just like to add one more thing. The procedure by which the pardon attorney does his work is set forth in Executive Order of the President of the United States in 1893.

They prepared a formal document, recommendations. Michael Kelly of The Washington Post has been writing about what is in it. Apparently, he knows what is in it. But this Senate is not able to get it. We are being stonewalled by this President. there is an Executive Order that sets forth an official procedure for the granting of the clemency.

As U.S. attorney, I was often asked did I agree or not, as these FBI agents should have been in this case. And I think we need to insist that we obtain the public documents that are pertinent to this procedure. And if there is some reason some of it should be kept secret, that is one thing, but I cannot imagine that there is.

The Chairman. I cannot either.

Senator Sessions. And I appreciate your willingness to demand that, and I would support you totally in it.

Thank you, Mr. Chairman.

The Chairman. Thank you. I might say we do have a blow-up of the Fraunces Tavern communique--can you put that back up there--where the FALN took full credit for the bombings. Now, people ought to read that. This is not some little itty-bitty thing. They were convicted, and they were justly convicted.

Let us turn to Senator Torricelli.

STATEMENT OF HON. ROBERT G. TORRICELLI, A U.S. SENATOR FROM THE
STATE OF NEW JERSEY

Senator Torricelli. Thank you, Mr. Chairman. First, I want to thank you for holding this hearing today.

Mr. Chairman, two of the seven people who were murdered by the FALN lived in the State of New Jersey. As a member of the U.S. Congress, I feel some responsibility to the families of the victims, to those in law enforcement who risked their lives attempting to protect us from these terrorists, to offer an apology. This is a better Government and those of who serve in this Congress are better people than this outrageous action would indicate.

There are no words sufficient to apologize to those who will live their lives with these wounds to explain this release from prison, other than simply to tell you that reaction against this clemency is deep, it is broad, it is bipartisan, it crosses all ideological divisions in this Congress. It should not have happened, and for the fact that it did happen, each of you have at least my apologies, which I intend to express to the people in New Jersey whose families were lost directly.

I do not know of any political cause that has less merits than those of the FALN. This is not the African National Congress. It is not any legitimate effort at national liberation. The people of Puerto Rico are in voluntary political association with the United States. They have voted repeatedly and overwhelmingly to be in voluntary political association with the United States. The day, the hour, the moment the people of Puerto Rico decide they do not want political association with the United States, they will have their independence.

From abject poverty, the people of Puerto Rico now enjoy the highest standard of living of anyone living in Latin America. They freely elect their own leaders. The economy of Puerto Rico is subsidized by hundreds of millions of dollars of transfers from the U.S. Government each year.

I am very proud that the people of Puerto Rico are in association and enjoy the citizenship of the United States. I believe it is a rich culture, and they are wonderful people, and I am proud of the association. But for anyone to believe that there is any legitimacy in taking armed action against the United States because of this political association is outrageous.

And frankly, Reverend, I do not say this lightly because I respect your position and your being a person of God, but it is not right, and it is not fair to invoke the name of Nelson Mandela in the same breath as the FALN. His fight against

apartheid and the outrageous political relationship of the people of South Africa with their Government, has no bearing and no relationship with the free association of the people of Puerto Rico and the United States.

I regret greatly the actions of President Clinton in this matter. I hope the committee will learn more about its motivation and the process so that it is never repeated. I also, Mr. Chairman, am greatly concerned, as someone who has been very involved because of the numbers of victims from my State who were lost in the Pan Am 103 bombing, about the credibility of the U.S. Government in fighting terrorism, in compelling other governments to bring to justice those who were involved in terrorism and the impact this may have on our foreign policy going forward.

I am also very concerned, as one who admires the people of Puerto Rico, about the misimpressions that other Americans are going to have about Puerto Ricans. The people of Puerto Rico have been good and loyal Americans. They have not only fought in every war and defended this country, they have done so in disproportionate numbers compared with other Americans. They have a rich culture that respects the law and democracy and the processes of this Government.

The people of the FALN are not heroes, they are cowards. They hid in the night, they planned bombings against innocent people for a cause that has no merits. Now, I hope every American recognizes that this is not typical of the people of Puerto Rico, it is not a part of their culture. This has no political basis among the people of Puerto Rico. And I just wish, in every way, the people of the United States could come to understand that about the lovely and extraordinary people who live on that island.

Mr. Chairman, I have no questions to offer. But I did want to make that statement simply because I wanted the people here to understand how deeply all of us feel about this action and about the pain they have had to endure through the years.

Mr. Chairman, thank you very much.

The Chairman. Thank you.

Senator Grassley.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator Grassley. I think we need to reflect on some of the outrageous points of view that have been expressed in support of the prisoners who have been released now.

We have been asked to approach this issue with a spirit of reconciliation and forgiveness. I think it would have been very helpful to reconciliation and forgiveness if the Executive Branch had at least asked the victims what their view was on the issue. What we have kind of in the final analysis is a take it or leave it deal. And it does not seem to me that that sort of an approach by the President of the United States is going to lead us down the road of reconciliation on this issue.

Some have said that the terrorists should be released because they have served a long time already in prison, longer than others in similar circumstances. But we have been told that the defenders, the prisoners' defenders, have been working for the release since the time of their arrest, before they served any time, in fact. So it seems to me the effort to get the terrorists out of jail is not based upon the length of time that they served, the length of time served seems like an excuse, rather than a reason.

I would hope that those of you who have not been asked, as victims, by the President--you said you were not asked--I would hope that you would want to have been asked. Is that fair to

say that you would have wanted to have been asked?

Mr. Pascarella. It is very fair to say that, Senator.

Senator Grassley. Do you think that it would be wise for Congress to enact a law requiring consultation with crime victims before granting clemency?

Mr. Pascarella. Yes, sir.

Mr. Newhall. Yes, I do.

Senator Grassley. Mr. Chairman, in closing, I know you have worked hard as chairman to get the proper people here to testify. I know you have been turned down by Government agencies for requests for information and people to come here and testify. And I just think in your leadership position, because this is such an important issue, that you ought to consider holding up nominees for certain Department of Justice posts.

I think that we need public testimony and not informal private briefings on this. I think, Mr. Chairman, that you cannot stand to be snubbed with private briefings, when you have asked for this information to be made public.

The Chairman. You have got that right. I think I am going to ask the committee to issue subpoenas for this information. We have very reluctantly never done that. But this Justice Department just has not been doing the job, and they have not been cooperative with this committee. And I am hoping that it will be bipartisan, my colleagues on both sides will support this, because I am just sick of it. I am sick of being stiffed by the Justice Department. I am sick of them ignoring reasonable requests to understand these matters. And if they have not abided by the law, by gosh, they ought to admit it.

And I am tired of getting the information from the media-- information they claim that they cannot give to us, yet suddenly shows up in the media. And so I am going to--I think we will have on the agenda tomorrow a request for an authorization for subpoenas so that we can start telling the Justice Department that this committee is a bipartisan committee that is not going to be stiffed any more. And frankly, we are just sick and tired of it. I am tired of it. I am tired of the way it is run down there. I am tired of the way that it is politicized.

All I want to do is get the facts out so the American people can see them, and they can make their own judgments about this. And I will tell you, this testimony here today has been forceful, as far as I am concerned.

We will go to Senator Abraham.

Senator Abraham. Thank you, Mr. Chairman.

Let me begin, Mr. Gallegos, we have learned today that Reverend Ikuta and others were part of the discussions. We have also learned that, I guess, that you attempted to have some impact on this and did not even receive a response.

We have heard what the victims' response is to learning this information. Could you tell us what your response is to learning that not only were your views not sought, but that even your correspondence was not even responded to now that you have learned that others had these opportunities.

Mr. Gallegos. Mr. Chairman, yesterday, there was testimony in another committee where the victims of this act, of the various acts, tried to correspond with the Department of Justice and the President for several years. This is not a new thing. In our attempt to address it, we tried the same thing, too, to try and address it with the President.

My reaction is that, as I testified to, that it is a slap in the face to law enforcement and especially to the American people that we do not know all of the facts as to why this was done. But I would also like to say something else. Me, as a law enforcement officer, I am especially angered that we would

follow through, we as a Government, would follow through on these clemency or these kinds of criminals. And as an Hispanic, I am embarrassed that these fellow Hispanics, Puerto Ricans--I am not Puerto Rican. Maybe I do not understand that--were given a hero's welcome in Puerto Rico. And the reverend speaks to that as if it is something glorious.

And Mr. Cintron indicated that these people were not even born or never lived in Puerto Rico. Well, why were they repatriated to Puerto Rico? They should have been sent back to New York or Chicago if that is really where they were from. So that is what causes the anger from law enforcement. And we have worked hard in the last few years to try and address all of the problems of law enforcement, and we have worked with this President to do that. And that is why we take it as--it is like getting a punch to the stomach, and that is the way I feel, Mr. Abraham.

Senator Abraham. Reverend Ikuta, you indicated that you were involved in a number of these meetings with White House and Justice Department officials that went into this decision. What did they tell you?

Rev. Ikuta. Thank you very much for commenting. We hear your concerns.

I think Washington officials get very good at really not saying very much about what they have in mind, you know. I mean, I think it is part of----

Senator Abraham. If I can associate with that, please--
[Laughter.]

Rev. Ikuta. It is part of the assignment. I would just, I know I am speaking----

Senator Abraham. I am really trying to get, we are having a hard time trying to figure out exactly why the administration acted as it did, what their rationale was. You seem to be the only person here who had a conversation with them and meetings with them. And so I am hoping maybe you can shed some light on this because no one else seems to be able to. And those who were members of the administration are apparently not being allowed to. So I am wondering if you could.

Rev. Ikuta. Well, I will do my best.

Senator Abraham. Sure. Please.

Rev. Ikuta. It is a little lonely up here, but I will do my best.

I would like to just reiterate some of these things. Mr. Torricelli, in his comments when he was here, talked about how the reaction has been deep and broad and has crossed ideological lines.

Senator Abraham. I am not asking you to critique the fairness of the Senators. I am asking you what the administration may have told you that helped shed light on their rationale.

Rev. Ikuta. They really gave us very, very--all I can tell you is what we told them. We never told them, for example, whether or not they should--who--others' opinions that they should seek out. We only offered ours.

Senator Abraham. Well, I know they did not sit there like potted plants, to use the old joke, so they must have been indicating some areas where they thought your case had merit. Which were those, can you tell us?

Rev. Ikuta. I am really not trying to be evasive.

Senator Abraham. I am not accusing you of that.

Rev. Ikuta. All I can tell you is what we told them. Because they did not--they really were not--we tried to press them, actually, ``Well, what do you think?'' and the reaction was pretty much what I think I have to admit a responsible Government reaction would be of taking in information until--in the process of formulating decision.

Again, I cannot speak to their own consultative process. I can only speak to what we went through to put forward our concerns. But we did talk about the deep, broad support for this, particularly in Puerto Rico, across ideological lines. I mean, the very same kind of language--and that is the only reason I was referencing that----

Senator Abraham. Were they interested in that in terms of the political support?

Rev. Ikuta. What we are trying to do is show that this is not something that is limited to a few people. Certainly, the people who began working for their release in 1980, and I was not among them, came from a very narrow ideological sector. As the time went on, as it became clear how excessively long or disproportionately long these sentences were, people who were not convicted of any--of these violent things, but were serving sentences 4 to 6 times longer than served by people who were convicted of murder. Let us say they were guilty for Fraunces Tavern or the other, and I might say I keep--the numbers keep going up. At first, I heard about five deaths caused by the FALN, and then six and then seven.

Senator Abraham. Well, listen, you have answered my question, which was that you cannot answer----

Rev. Ikuta. I cannot tell you how they responded because they really did not give a lot----

Senator Abraham. All right. Thank you.

Let me just--I am over. I just want to say, in summary, I had hoped maybe you could help us because we are trying to get this information. Clearly, you cannot provide it either and, therefore, Mr. Chairman, I certainly will be supportive of any efforts that you want to undertake to get more information.

I would just say that I guess I just have to share the views of Senator Torricelli, and Senator Sessions and others here that I have a very, very--I get very frustrated hearing these apologies and explanations. I believe that every member of Congress should stand up on this issue and absolutely and strongly take a firm position against what I think is a misuse of the President's clemency powers, and I think we ought to find out exactly what the process was that reached this. Because you do not get 98 to 2 votes in the U.S. Senate that often.

And when there is that overwhelming a sense of agreement in the U.S. Senate and almost a similar percentage in the House of Representatives, then I think it clearly reflects a consensus of the American people, and we have a responsibility, Mr. Chairman, to support your efforts to try to get to the bottom of this.

Thank you very much.

[The prepared statement of Senator Abraham follows:]

Prepared Statement of Senator Spencer Abraham

Mr. Chairman, let me first thank you for holding this hearing. The victims of terrorism and their families, the law enforcement community, and the people of the United States deserve an explanation of this indefensible action.

By granting clemency to terrorists, President Clinton has, I believe, shown disrespect for those who put their lives on the line in the fight against terrorism, and for the people of Puerto Rico, who have overwhelmingly rejected both the evil methods and the goals of the FALN or, in English, the Armed Forces of National Liberation.

Mr. Chairman, I think every member of Congress should stand up and take a firm position against this because it undermines our continuing war against terrorism and puts our freedom and our families at risk.

Over the years, this administration has shown a great willingness to spend American funds and risk American lives in the fight against

terrorism worldwide.

By freeing these unrepentant terrorists, President Clinton has undermined any progress he might have made on this front. His action could re-legitimize the evil practice of targeting innocent civilians for political violence. It sends the signal to would-be terrorists that, even if they are caught, convicted and sentenced, they can escape full and just punishment for their crimes.

It tells our citizens that they cannot depend on their government to fulfill its central, indispensable function of protecting them from acts of violence.

Of all the thousands of people serving sentences in prisons around this country, these 12 would seem among the least deserving of clemency. Yet President Clinton has chosen to reduce their sentences, freeing most of them immediately.

I must admit that I am somewhat at a loss to explain the President's decision in this matter. Indeed, Mr. Chairman, I wish that the administration had sent a representative to this hearing. I wish I had an opportunity to ask that representative a number of questions concerning the clemency decision.

For example: Why did the President ignore the recommendations of his own Federal Bureau of Investigation, his Bureau of Prisons and his U.S. Attorney's Office, all of which opposed this clemency?

Moreover, why didn't the President consult with the victims of these terrorists? Didn't he care what effects his decision would have on the families of the 6 people murdered by the FALN?

Did the President not care about the suffering of the dozens of people maimed for life in the name of ``liberation?''

These are tough questions, Mr. Chairman. But I can't help but believe that they should be asked.

We cannot undo the President's deeply unfortunate act. But it is my hope that we may, through this hearing, throw light on this great travesty of justice, that we may prevent its like from happening again.

We owe no less to the brave men and women in the front lines of the war against terrorism, and to the people of America, who have a right to be free from the kind of mindless violence perpetrated by groups like the FALN. Thank you.

Republican National Committee,
San Juan, PR, September 13, 1999.

Open letter to the Republican Leadership in Congress.

As Speaker of the House of Representatives and National Committeeman of the Republican Party of Puerto Rico, I want to express my outrage today at the politically self-serving fashion in which President Clinton handled the release of the Puerto Rican prisoners.

The case of the prisoners has been under discussion for several years. President Clinton had been asked to resolve this issue, going back to 1993, yet he failed to make a timely decision and waited to do so when he thought it would help his wife in her race for the U.S. Senate seat of New York.

Deserving of even more outrage and censure is the flip/flop position assumed by Hillary Clinton in taking advantage of the Executive Pardon to further her political aspirations. When the debate exploded, she quickly withdrew her support of the pardon, then tried to reverse herself a few days later. All of this was done in a callous effort to influence the Hispanic vote in New York.

The actions of the first couple have again tarnished the Presidency and challenged our democratic system, weakened the cause of the prisoners and insulted the Hispanic voters in New York. This issue should have been carefully discussed with the Bureau of Prisons and other law enforcement agencies, rather than creating political leverage in order to help the cause of Hillary Clinton's Senate aspirations.

The people of Puerto Rico are proud of their United States citizenship and of the ties that bind us as Americans. We abhor violence and ask not to be judged by the actions of a few. At the same time, we are offended and dismayed with this issue which has been taken out of context due to the incredible political gaffe committed at the presidential level. We ask the President to apologize to the Hispanic voters in New York and call on Congress for a full investigation into the decision making process by the President in this case. I stand ready to assist Congress and give testimony as may be required on this or any other important issue concerning Puerto Rico.

Edison Misla-Aldarondo,
National Committeeman for Puerto Rico.

Puerto Rico: America's Bulwark of Democracy 9/14/99

The controversy surrounding the Presidential clemency to members of the terrorist organization FALN provides Congress and the American public an opportunity to better appreciate the 101 year commitment to democratic ideals embodied in the U.S. Constitution on the part of Puerto Rico's four million American citizens.

Just as the illegal actions of individuals like Timothy McViegh and other anti-government organizations do not reflect the democratic views or approval of the American people, the tactics employed by the independence minded FALN do not mirror the democratic principles and practices of the people of Puerto Rico. To assume otherwise, is to do a great injustice to the 99.5 percent of the law abiding U.S. citizens of Puerto Rico. It also besmirches the honor of the thousands of brave Puerto Rican men and woman who have fought to defend this nation in every conflict since World War I.

Puerto Rico has truly been the living ideal of democracy since its inclusion as a U.S. Territory in 1898. There is no other American jurisdiction as committed to democratic principles as Puerto Rico. Traditionally, 85 percent of registered Puerto Rican voters cast ballots in every election. This is two and one half times higher than stateside counterparts. Puerto Rico's Constitution closely follows the national model and is similar to most, every other State, granting universal suffrage and allowing for representation in its governing bodies even by parties that would otherwise not garner enough votes on their own. One at-large member represents the Independence Party in both of Puerto Rico's legislative chambers even though it regularly receives less than 3 percent of the votes cast island wide.

Puerto Rico's democratic system allows for all views on the island's current and future status options; independence, statehood, and commonwealth, to be aired in democratic and legislative forums. Individuals and organizations acting outside these institutions on behalf of any of these options are not encouraged or legally countenanced.

Equally telling is Puerto Rico's defense of American democracy. With one of the highest military enlistment rates, over 197,000 Puerto Rican men and women have defended American principles in every conflict abroad from World War I to Kosovo. Some 6,220 have been wounded and 1,228 have been killed in the service of the United States. Four Puerto Rican soldiers have been awarded the Congressional Medal of Honor.

Puerto Ricans are proud of their U.S. citizenship, and stand with all Americans in defense of our liberty and with respect for law and order. We condemn the actions of the FALN or anyone else who would resort to violence in a tenuous defense of their cause.

[GRAPHIC] [TIFF OMITTED] T8017.008

[GRAPHIC] [TIFF OMITTED] T8017.009

[GRAPHIC] [TIFF OMITTED] T8017.010

The Chairman. Well, thank you, Senator.

Yes, I have no desire to embarrass anybody. I just want to know what is going on down there in our jurisdiction. We have overview of that group. And by gosh it is time to get some cooperation.

Senator Sessions. Mr. Chairman, may I make one point?

The Chairman. Sure.

Senator Sessions. On the sentencing guidelines, as the Senator asked, these cases were tried before the sentencing guidelines took effect. So it did not have the mandatory sentences at all, number one. But that means they are eligible for parole through an official legal parole proceeding if they ask for it, and apparently they have.

The Chairman. No, they have not. According to the Parole Commission, two asked for parole. Now, Reverend Ikuta said---

Rev. Ikuta. I could tell you their names.

The Chairman [continuing]. She believes three. But we asked the Parole Commission, and they said two. Be that as it may, even if it is three, it is relatively few of them have asked for parole or clemency. None of them have asked for clemency, as far as I know.

Senator Sessions. Well, I guess my point is, under the sentencing guidelines, there is no parole. So if you get 20 years, you serve 20 years. If you got 20 years under the previous parole system, as these people were sentenced, they would normally serve one-third, unless it was a particularly heinous crime, as this one might be, and they may serve more than one-third. But they are eligible to be released in one-third.

So comparing the numbers, you have got to be careful. That is all I am saying. Which is a greater sentence? A 60-year sentence under the new law is--or under the old law is no more than a 20-year sentence under the no parole law, in most cases.

The Chairman. Senator Kyl.

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator Kyl. Thank you, Mr. Chairman, and thank you for holding this hearing. I associate myself with the comments that have been made by other members of the committee on both sides of the aisle.

I think there are three questions posed by the President's action here. The first is what it says about our country's position with respect to terrorism. Now, both the President and we have had much to say about that. It is of a concern to me. I have been advised by people who are in Puerto Rico that it has had a tendency to reignite what was a movement in hibernation. The independence movement, of course, has always been active, but never been supported by more than a very small percentage of the people of Puerto Rico.

Now, Senator Torricelli pointed out, at the very moment that the people of Puerto Rico should choose independence, that is precisely what they would have. But this is different. This is the FALN. This is the group that says the only way to achieve our goal is through terrorism against innocent people in the United States, and that makes absolutely no sense. And for this action to have reignited that movement seems to me to be the worst of the consequences of what was done here.

Mr. Chairman, as you know, I chair the Subcommittee on Terrorism of this committee, and I will stand ready to conduct hearings, to conduct investigations or in any other way to cooperate with you and with the full committee as we continue to monitor the situation. Because, clearly, if that is what the effect of this has been, we are going to have to know about it

and, clearly, our law enforcement people are going to have to be able to deal with it as well.

In that regard, let me also second what I have heard from many people now in that this does not represent the views of the law enforcement of Puerto Rico at large. In that respect, Mr. Chairman, I would like to submit for the record three statements. One is anonymous, but the other two come from Dr. Miriam Ramirez, a candidate for office, a respected citizen of Puerto Rico and the United States, and I would like to submit those for the record at this time.

The Chairman. Without objection, we will put them in the record.

Senator Kyl. So that is the first question, what does this say about our response to our terrorism?

The second is why were the unanimous recommendations of law enforcement ignored? And this pertains directly to our oversight of the Department of Justice, precisely what you, Mr. Chairman, and others have pointed out here. We will have to continue to deal with that. Because as Reverend Ikuta could have pointed out, her group, just one of many, has met with Messrs. Holder, Quinn, Ruff and others, where the victims have not had that opportunity. And obviously we will have to continue to pursue that.

Finally, the third question is, why were the victims not notified? The 1990 Federal Victims' Rights statute pertains to this. It is unclear, in some respects, and it is inadequate because it does not provide fundamental rights, a point that Senator Feinstein and I have tried to make many times. There are some things that you just cannot do by statute. It requires a constitutional amendment.

And I think this is a perfect example of where the Federal statute failed. Because the Department of Justice ignored it, it may have violated the letter, but it clearly violated the spirit of the law. And that is what happens far too often in our society. We have statutes that say you should notify victims. But even well-meaning people forget to do it, do not think about it, find it to be an inconvenience, find reasons not to do it, find the law does not clearly require them to do something, therefore, they are not going to take the effort to do it.

All of those are reasons why statutes do not work. And this Federal statute failed in this case, notwithstanding a Department of Justice which professes, and I think there are good intentions involved here, to care about the rights of victims. Even there they failed. It did not happen.

And it seems to me that that is a very good argument for why we need a Federal constitutional amendment to protect the rights of victims of crime. We are talking about violent crime. We are talking about family members of those deceased, like Mr. O'Connor, who I heard yesterday when I attended the Foreign Relations Committee hearing, other victims of the crime, the police officers, as well as the officers who are testifying here today.

So it seems to me that these are the three questions. It clearly suggests the need for continuing jurisdiction by this committee, and it clearly suggests, also, the need for a Federal constitutional amendment to protect the rights of victims which include being informed of a potential release for clemency or pardon and having the opportunity to speak to the issue.

I appreciate the testimony of all of you here at this time of the day. Thank you.

[The prepared statements of Ms. Ramirez and an anonymous statement follow:]

Prepared Statement of Dr. Miriam Ramirez de Ferrer \1\

\1\ Miriam Ramirez is the President and founder of Puerto Ricans in Civic Action, a non-partisan civic organization promoting equal citizenship rights and full participation in the national economic and fiscal system for the 3.8 million U.S. citizens residing in Puerto Rico. Ramirez also has served as President of the Republican Women of Puerto Rico, a chapter of the National Federation of Republican Women. She was an elected Delegate to the Republican National Convention in 1984, 1988 and 1992, and was selected by President Bush in 1990 to serve as a member of the U.S. delegation to observe presidential elections in El Salvador.

Dr. Ramirez is a practicing physician in Puerto Rico. She received her medical degree from the University of Madrid in 1968, and her undergraduate degree from the University of Maryland.

They declared war on United States and struck without mercy in Puerto Rico, New York, Connecticut, Illinois and anywhere else they could target innocent victims.

Now President Clinton has decided that--instead of doing anything serious or significant to resolve the political status of Puerto Rico--his legacy to 3.8 million law-abiding United States citizens of Puerto Rico is to set terrorists free to once again be a menace and a threat among us.

On August 11, 1999, President Clinton gave the keys to the jailhouse door to 16 felons convicted of crimes linked to domestic terrorism committed in the name of independence for Puerto Rico. Now they are parading around from New York to Puerto Rico comparing themselves to Nelson Mandela. Is anyone in the press going to remind them that Mandela was fighting a regime of apartheid that outlawed majority rule, while the FALN committed murders in defiance of majority rule after a majority of Puerto Ricans repeatedly rejected independence?

The presidential commutation offer followed years of lobbying by supporters of the prisoners and celebrities persuaded that the ideological motives of these criminals justify special political treatment not available to other convicts. Clinton's offer took the choice on whether these convicts constitute a threat out of the hands of federal pardon and parole authorities and gave the choice on their release to the convicts.

Regrettably, Clinton's offer politicizes these criminal cases by offering special treatment, but the conditions for release do not promote a sense of justice and reconciliation for the victims or the 3.9 million, law-abiding, loyal and patriotic United States citizens of Puerto Rico. Perhaps the ``third path'' of political compromise that Clinton likes to talk about works in some cases, but in this case Clinton's action is the moral equivalent to Solomon going ahead and cutting the baby in half. Mr. Clinton would have done better to simply allow the issue to be determined by the normal criminal justice process through which convicts are released when they are eligible and no longer a threat to society.

Those who support an unconditional pardon for these convicts argue they have been incarcerated longer than others who committed comparable crimes. This ignores the fact that other inmates who were paroled or pardoned accepted responsibility and expressed remorse for their crimes years before the federal prison authorities released them. The inmates from Puerto Rico refused for decades to express remorse for their crimes, or even to renounce violence, and that is why they stayed in jail longer than they otherwise might have.

The survivors of the dead and the disabled victims of their terrorist attacks--including four innocent people murdered in the bombing of Fraunces Tavern in New York City--are appalled at the use of pardon powers based on politics instead of rehabilitation and remorse. President Clinton's offer to commute the sentences of these terrorists

on condition that they renounce violence ignores the real reason these terrorists have remained in jail so long, which is that they seek political vindication rather than forgiveness and reconciliation. The lack of remorse for victims alone should have precluded special treatment for these terrorists, and the conditions prescribed in the commutation offer do not even address that moral issue.

History teaches that irresponsible leniency does not promote healing. Terrorists who ambushed members on the House floor in 1956, later pardoned by President Carter, to this day proudly stand by their conduct and refuse to repudiate their treachery on the grounds that the U.S. ``occupies'' Puerto Rico against the will of the people. Release of more unrepentant terrorists is likely only to further delay political reconciliation for Puerto Rico. Indeed, to politicize their status or give them special treatment could set a precedent that may encourage terror in Puerto Rico and elsewhere by other zealots with ideological motives.

All federal prisoners should be treated fairly, and released when their debt to society has been paid. Accordingly, President Clinton should have responded to the clemency appeal for these prisoners by explaining the standards and conditions for release of federal prisoners when their sentences are complete or they are good candidates for a pardon. To offer to commute their sentences if they go through the motions of acting like good candidates for parole or pardon lends unfounded credence to the ridiculous claim that these people are ``political prisoners''.

President Clinton has recognized the reality that these people acted illegally, but he has not made a strong enough statement that armed action and violence is not morally justified or politically legitimate in this the nation that has done more than any nation in the history of the world to promote liberty, justice and self-determination. The failure of the U.S. and Puerto Rico to resolve the question of that territory's political status in this century falls far short of the anti-colonial values for which this nation stands, but that does not justify terrorism by the small minority in Puerto Rico who do not want U.S. sovereignty, nationality and citizenship to continue.

Indeed, beginning in 1953, when the current form of local self-government was established under U.S. federal law, President Eisenhower and every president since has made it clear that independence for Puerto Rico is there for the asking. However, more than 95 percent of the voters consistently have expressed a desire for permanent political union and U.S. citizenship. This means that ending the current disenfranchisement of 3.8 million U.S. citizens in Puerto Rico and delivering on the promise of the American dream, rather than reacting to radicals espousing independence, is the first order of business if U.S. policy is to be consistent with the principles of self-determination.

At the same time, the U.S. is not under any obligation to coddle the U.S. citizens of Puerto Rico as the process of self-determination unfolds. It is absurd to argue that the U.S. should act as if we as a nation have no self-interest, and devote U.S. resources into supporting Puerto Rico's development without expecting Puerto Rico's U.S. citizens to embrace equal rights and duties of citizenship. Rather, U.S. policy has been based on the fair assumption that our fellow citizens in the commonwealth territory want to be part of this nation, will demand equality eventually when they get tired of being a territory and petition for statehood, and find ways to preserve their own cultural identity and language without being hostile to the diverse cultures and languages of the nation.

The alternative to statehood is independence. The tough choices required to implement one of those options seem too harsh to some, so the notion of a permanent territory with special rights to make up for the lack of equality was introduced under the ``commonwealth'' label. That has delayed the day of reckoning, but will never solve the underlying problem that federal supremacy comes with U.S. nationality

and citizenship. U.S. federalism simply can not operate on the basis of permanent disenfranchisement and second class citizenship for U.S. nationals, and the less than equal status of Puerto Rico will end only when the territory becomes a state of the union or a separate nation.

So now every issue that arises in Puerto Rico ultimately relates to the status question. No important public policy issue--taxation, voting rights, federal and local sovereignty, trade policy, the territory's role in our national defense, citizenship rights--can be finally resolved until status is resolved. There is one set of solutions if Puerto Rico is a state, and there is another set of solutions if Puerto Rico is to be an independent nation. It is the difference between the Philippines and Alaska.

Congress and the status quo faction in Puerto Rico may want to delay the choice a little longer, but ultimately it will have to be one way or the other. U.S. sovereignty in Puerto Rico is legal, but not legitimate until there is real self-determination on the question of statehood or independence.

When the day of reckoning comes, it will be clear that the problem these 15 radicals in jail face is with their own people, not the United States. President Clinton should have just said as much, and referred all correspondence about these prisoners to the federal pardon.

Press Release: Puerto Ricans In Civic Action
(September 13, 1999, Washington, DC)

Dr. Miriam Ramirez de Ferrer today released the following statement on President Clinton's release of terrorists who seek by violence to impose their ideology as to Puerto Rico's political status on the people of the United States, including the 3.8 million U.S. citizens of Puerto Rico:

This controversy is about the President's policy on terrorism. The President decided to listen to Jimmy Carter and other celebrities who do not know the facts in these cases. Mr. Clinton should have listened to law enforcement authorities and the victims instead. Jimmy Carter was wrong in releasing some of these terrorists in 1979, and he was wrong in supporting the release of these prisoners in 1999. The President's duty in using the clemency power is to do justice, and in this case he has done an injustice to past and future victims of domestic terrorism.

Until Congress establishes a mechanism to resolve the political status of Puerto Rico and end the disenfranchisement of 3.8 million U.S. citizens, there will be a small percentage of individuals and radical groups in Puerto Rico and the U.S. mainland who will support the warped view of history espoused by these terrorists. No other large and populous territory in U.S. history has ever been granted U.S. citizenship and then denied the right of self-determination for a full century. Until Congress defines the terms for a permanent status through statehood or independence, a small percentage of Puerto Ricans in the mainland and in Puerto Rico will seek to make Puerto Rico a nation-within-a-nation, demanding the benefits of both statehood and independence, through a pseudo nationalist ideology that rejects the full duties and responsibilities of either statehood or independence.

These terrorists were based in New York and Illinois, not in Puerto Rico. They no more represent the people of Puerto Rico than Timothy McVeigh or Charles Manson represent their home states. These terrorists are as much a threat to the law-abiding U.S. citizens of Puerto Rico as to communities in the mainland, and to be sure they are a continuing threat to innocent people everywhere in the United States. Their release

will have a chilling effect on free and open political debate in Puerto Rico, where it is well understood they renounced violence to get out of jail. Their release will encourage more violence to alienate Puerto Rico from the rest of the nation--against the clear will of the people in every status vote since 1952. President Clinton has taken sides with a radical elite in Puerto Rico who mislead our young people.

The character, loyalty and patriotism of the U.S. citizens of Puerto Rico can be judged by our valor in every war of this century, by the ranks of those among us who have been awarded the Congressional Medal of Honor, the Silver Star, and the Purple Heart. The pilot shot down in President Reagan's raid on Libya, the first Marine killed in Somalia, the brave soldier who risked his life to save his comrades from the barracks bombing in Saudi Arabia--these are the Puerto Ricans who, along with average hard working citizens, represent our community in the U.S. national family.

Anonymous Prepared Statement Submitted By Senator Kyl

federal prisoners from puerto rico should have been treated the same as convicts from other states or territories \2\

 \2\ A version of this paper was issued before the commutation.
 Authors remain anonymous due to fear of reprisal.

There are 3.8 million U.S. citizens in Puerto Rico--America's last large and populous unincorporated territory. U.S. nationality for Puerto Rico was established after the Spanish American War in 1898. In 1917 the Congress offered U.S. citizenship to residents of Puerto Rico, and less than 400 chose to remain nationals but not citizens. The U.S. citizens of Puerto Rico are now an integral part of this nation, and Puerto Rico is on a path of political convergence with the United States as a whole.

As Congress in recent years debated legislation to resolve the political status of Puerto Rico, an effort began to divert attention away from self-determination to the self-created predicament of a few domestic terrorists from Puerto Rico who are not at all representative of our fellow Americans in the territory. This culminated in a well-orchestrated publicity and propaganda campaign promoting ``amnesty'' for a small group of convicted criminals in federal prisons who want Puerto Rico to be independent.

Thus, on December 17, 1996, an advertisement appeared in the Washington Post sponsored by several members of the clergy in this country seeking ``amnesty'' for the 15 jailed convicts who claim to be soldiers in an undeclared war to forcibly separate Puerto Rico from the United States. As recently as December 14, 1998 a new letter-writing campaign began with appeals by clearly misinformed advocates of ``clemency for political prisoners'' from Puerto Rico.

Several celebrities and respected leaders have been solicited to support the appeal to simply release these duly convicted extremists as a political gesture. Scores of average citizens have been recruited for letter-writing duties to demand a pardon. Instead of leaving it to formal pardon procedures in the Department of Justice available for these convicts to seek relief from their sentences based on standards applied to all prisoners, President Clinton now has responded to the political campaign for release of these prisoners by commuting the sentences in these cases.

Unfortunately, both the misguided amnesty appeal itself and the President's response send a signal that politically motivated crimes can and should be politicized. This paper evaluates the substance of appeals for special treatment in these cases, and evaluates the moral and legal premise of the on-going attempt to make terrorists out as martyrs. Even though President Clinton attempted to confirm that the

prisoners were the perpetrators of crimes not justified by arguments about ``U.S. imperialism'', the terms of the commutation still constitute special treatment that should not have been extended in these cases.

President Clinton should have taken the time to examine more closely the premises of the 1996 and 1998 political advertising for this so-called amnesty appeal. For it is based on an unpersuasive attempt to put the spin of ``idealism'' on actions in the past which crossed the line between legitimate protest and criminality. This so-called ``amnesty'' appeal was first presented in 1996 for 16 former agents of the ``Armed Forces for National Liberation'' (FALN) and ``Macheteros'' factions in Puerto Rico. The newspaper ads on behalf of the convicts attempted to sanitize their violent crimes as ``actions on behalf of the cause of independence.'' The appeal also details good deeds of these convicts in the jailhouse.

Conspicuously omitted from this public appeal addressed to President Clinton are details reported in the San Juan Star coverage of the issue, such as FALN's 1975 bombing of Fraunces Tavern in New York City killing 4 people and injuring 44. Nor was there any mention of the ``Macheteros'' role in the \$7.1 million Wells Fargo robbery in Connecticut back in 1983, the apparent diversion of that stolen money to radicals based in Cuba, or the convictions of the 15 FALN and Macheteros members for sedition and terrorist conspiracy.

What is particularly troubling is that the 1996 message to the President states that the sponsors of this campaign for release of federal prisoners ``* * * are not united * * * about the means employed by these fifteen women and men in their quest for an independent Puerto Rico * * *'' The first premise for any ethically credible pardon request in these cases would have to be that the inmates and their supporters are united in recognizing as unconscionable the actions for which they were duly convicted. In the absence of genuine contrition, this appeal has profoundly disturbing moral implications.

Not only is there no convincing remorse among this group of conspirators, on January 21, 1997, an Associated Press wire story on the appeal reports that the prisoners refuse to cooperate with federal authorities in solving the Fraunces Tavern case and other crimes connected to over 130 FALN bombings. Those attacks killed six people (including a 6 year child who died when an FALN bomb went off in a restaurant in Puerto Rico), and wounded or maimed many others (including an NYPD officer who lost an eye and was disabled for life after FALN tipped off police on location of a bomb, which was detonated only after officers were on the scene).

According to the 1997 AP story, the FALN prisoners refused even that recently to renounce further violence against the United States. One of the imprisoned FALN leaders is quoted as saying, ``We cannot renounce the right to defend ourselves.'' That, along with lack of remorse for victims or cooperation with authorities in solving crimes they committed, should have precluded an invitation by the President for release based on an obviously insincere renunciation of violence.

Indeed, reports that the prisoners were prepared to renounce violence and statements made by some of the prisoners which included equivocal and ambiguous repudiations of violence now appear to have been the bait offered to Clinton to intervene politically, and the U.S. President took the bait. Does anyone really believe that people who will only renounce violence when it is made a condition for release are sincere? The repudiation of violence should have come long before an offer of commutation, and it should have been convincing enough that parole and pardon authorities would have been able to support the commutation offer, which was not the case.

The 1998 propaganda campaign that was apparently orchestrated with some on the White House staff repeats the same ethical mistakes of the 1996 campaign by arguing that the convicts should be treated as political prisoners because they did not ``recognize the authority of the United States'' in Puerto Rico. The notion that it would promote ``reconciliation'' to treat these prisoners and their victims by a

different standard than that applied in the cases of other violent offenders because they had ideological motivation for their crimes is both naive and dangerous. Are these same organizations seeking the release of the Oklahoma City bombers and abortion-clinic terrorists as political prisoners?

The following observations must be considered carefully in evaluating this ill-conceived amnesty appeal:

There is a legitimate independence party in Puerto Rico, though independence historically has garnered only around 3-4 percent of the vote in plebiscites and polls. Supporters of independence are free to pursue their aspirations with ballots, but not with bullets. Those who commit violence in the name of Puerto Rican independence are not only enemies of the U.S., but also enemies of democratic self-determination for the people of Puerto Rico, who are U.S. citizens.

In 1952 the voters of Puerto Rico approved the current federal and local constitutional arrangements under the present territorial relationship, but because the territorial commonwealth status is not full self-government the U.S. recognizes Puerto Rico's right to self-determination in favor of a new self-governing status--including statehood or independence if that is what the voters decide in a free and informed vote. Thus, by comparing the political status process in Puerto Rico to Northern Ireland or the Middle East, this amnesty appeal distorted history and trivializes the real struggle for liberty and peace in the modern era.

To call these convicts ``political prisoners'' makes a mockery of the suffering of those all around the world who truly are being punished for their political ideas in non-democratic societies. These 16 inmates are not in jail for ``crimes of conscience,'' but for crimes that shock the conscience.

In several elections and referenda the people of Puerto Rico consistently have expressed the desire for continued union with the United States. Indeed, in an inconclusive but important political status vote in 1993, the combined majority of those voting for status options based on continued union and U.S. citizenship exceeded 95 percent of the voters. In another non-binding local plebiscite in 1998 the vote for options other than independence exceeded 97 percent.

In addition, even Puerto Rico's separatists acknowledge that U.S. leaders have offered to take the path to independence, but that at critical moments in the history of Puerto Rico's political status process the elected leadership in Puerto Rico chose to seek an accommodation based on continued U.S. sovereignty, nationality and citizenship. Thus, democracy is working in Puerto Rico, underscoring the already self-evident reality that the ideological and political explanations for these crimes fall far short of legal, intellectual or historical validity, much less moral justification.

Celebrities, religious figures, and persons associated with great leaders martyred in the cause of liberty often are recruited for propaganda campaigns they may not fully understand. For prominent people who support the legitimate struggle for freedom around the world to lend their good names to this amnesty appeal is best compared to the case of a television or sports star unknowingly endorsing products made by exploited foreign workers. It teaches us that political leaders, and even our cultural heroes, can be misled in a way that places them unwittingly in opposition to the rational and orderly administration of justice.

For example, the AP story on January 21 quotes one of the earlier generation of Puerto Rican terrorists, who opened fire on the assembled Members of Congress from the gallery of the

House chamber in 1954, as stating that he has ``nothing to regret.'' President Carter pardoned that prisoner in the name of compassion and reconciliation, even though the compassion and reconciliation in these cases obviously does not involve any moral reciprocity. Thus, President Carter's compassion in that case appears to have been misdirected, but instead of learning from Carter's mistake Clinton apparently has been sandbagged by closet left-wingers on his staff into another inappropriate political abuse of the power to pardon. It is a sad day when White House staffers accept the premise of Jesse Jackson and Jimmy Carter that these criminals who were free to try to convince voters to support independence, but chose bullets when ballots were available, needed to be rescued from the United States the same way captives of Saddam Hussein or Slobodon Milosovic have been freed through celebrity humanitarian appeals. This commutation offer was concocted by people in the Clinton White House who were clearly sympathetic with the ludicrous notion that these people were being held in violation of civilized standards of justice.

While the media campaign for this political propaganda effort in 1996 and 1998 was timed to coincide with holidays when we are in a spirit of reconciliation, as Pope John Paul explained after meeting in prison with the man who shot him, forgiveness does not diminish the need for justice. Instead of equating forgiveness with amnesty, the Pope recognized the redemptive power of justice in the form of punishment humanely administered in the name of the people acting collectively through the courts and criminal system to protect society and recognize the rights and needs of the victims.

To describe violent crimes committed with malice and reckless disregard for the lives of other human beings as ``means employed'' in a ``quest for independence'' is as callous toward the real victims as it is misleading. To argue that equity requires sentences for violent life-threatening crimes that could have but did not result in murder to be less than the time done by some persons convicted of murder ignores the stark reality that these were cold-blooded crimes committed by people with intent to inflict random death and injury on still more innocent people through a campaign of terrorism. In addition, it should not be surprising that a person who committed murder may be released before a person who conspired to kill if the convicted murderer expresses remorse and vows never to kill again but the conspirator refuses to renounce terror in the future.

When it is proved that people have sedition on their minds and murder in their hearts, society does not have to wait until they strike and kill again before locking them up. That is what conspiracy convictions are all about. If the conspirator is unrepentant, then society has a right to protect itself by keeping that person behind bars.

The appeal for compassion argued that 15 years served on sentences of 35 to 90 years is too long and represents abuse of federal power. Ironically, on December 18, 1996, the day the San Juan Star published the first article about the ``amnesty'' appeal, another article appeared about the 99 year prison sentence imposed by a local court in Puerto Rico on an 18 year old accomplice in a local murder case. Apparently the Puerto Rico justice system also recognizes that conspiracy and complicity in murder can warrant severe punishment even though the accomplice was not caught or convicted for pulling the trigger.

As with any violent criminal group, regardless of a political agenda, if the U.S. or the people of Puerto Rico had allowed criminal elements to seize power through violence, it could have ushered in an era of intolerance and

totalitarianism. Instead of finally realizing the goal of full democratic self-government and a successful end to territorial status, in the political order these terrorists would have created those who dissented or elected allegiance to the U.S. might have joined the ranks of victims of ``revolutionary justice.'' It might have come in the form of a death sentence summarily executed in the dark of night, or by a terrorist bomb attack. Thus, in the apprehension and prosecution of these conspirators we truly saw God's mercy and grace sparing the lives of the innocent people who surely would have become the next victims of their ruthless plots.

It is common for those in prison to do good works, and the good that prisoners do is worthy of recognition. No one is against rehabilitation of criminals. If the corrections system had determined that the 16 criminals in these cases should be released on the same basis that any other criminals might be released, no one will begrudge them their freedom after paying their debt to society. However, it could be an invitation for other criminals to target their neighbors or our nation for crime, and then claim a political motive when caught, if we accept the flawed premise of this so-called ``amnesty'' appeal and the President's mistaken offer to commute.

Indeed, the cause of liberty, justice, peace and self-determination is demeaned by an appeal based on the offensive notion that releasing these convicts somehow will advance that cause. For liberty, justice, peace and self-determination were the very values and beliefs in our civilization that these criminals cast aside in order to impose their will on others. They were willing to take freedom and life itself away from their victims forever, and that must not be forgotten.

Overt and deadly terrorism and the crimes of conspiracy and sedition for which these prisoners were convicted simply did not need to take place in this most democratic of all nations in the history of the world. Instead of working at the grass-roots level to promote popular support for their cause, these criminals chose to emulate the right wing thugs and left-wing gangsters who brought totalitarianism to so many countries in this century.

In the name of justice we also must never forget the real victims of FALN and ``Macheteros'' crimes which have not been solved. There is no appeal from the death sentence already executed by the FALN against the Fraunces Tavern bombing victims. Indeed, there is no power on earth that can grant amnesty to those innocent murder victims so they can return home to their families. Not this year, not ever. The six-year-old child the FALN murdered in Mayaguez in 1975 (blaming their ``mistake'' on the CIA) has missed every school event, family gathering and birthday party for the last 25 years. The sentence being served by that child's family is for life, with no possibility of parole.

Against this backdrop, the attempt of some commentators to suggest that the time had come to release the remaining 16 jailed convicts to give legitimacy to the self-determination process is offensive. The illegitimacy of the terrorist ideology, not need for a self-determination process, is what is at issue here. There should have been no politically motivated release, but pardon should have been considered only if in the routine process of the Federal corrections system it was determined by the same standards applied to all other prisoners that these prisoners had paid their debt to society and are no longer a threat.

Now President Clinton tells us he was not really paying close attention when he signed the commutation offer. How can he be so good at the details and complicated moral and political equations when he is

trying to define his way out of a scandal, but when he is releasing terrorists into our communities he portrays himself as detached and not really a hands-on sort of guy?

Clearly, there is much more that must be contemplated as we search for the wisdom to show ethically purposeful compassion in these sorry affairs. A morally complete reckoning in this matter is more complicated than the apologists for these terrorists, or the foolish policy that led to their release, have been able to address.

[GRAPHIC] [TIFF OMITTED] T8017.011

[GRAPHIC] [TIFF OMITTED] T8017.012

[GRAPHIC] [TIFF OMITTED] T8017.013

[GRAPHIC] [TIFF OMITTED] T8017.014

[GRAPHIC] [TIFF OMITTED] T8017.015

[GRAPHIC] [TIFF OMITTED] T8017.016

The Chairman. Well, thank you, Senator.

Let me, just in closing, this deal with a terrorist episode would serve to undermine future law enforcement investigations and encourage future acts of domestic terrorism. To quote New York City Police Commissioner Howard Safir, ``President Clinton has committed an ill-advised and egregious error. He has broken the fundamental rule in addressing terrorism. Never negotiate deals with terrorists.''

Now, 2 weeks have passed since I requested that the Department of Justice provide this committee with relevant documents. The call for review of some of these items has been bipartisan. Yet, the Department tells us that the White House is still studying this matter. In fairness, there may be a legitimate argument that executive privilege applies to some materials. But executive privilege has not been asserted, nor does the privilege apply, were it to be asserted, to every document or testimony associated with the FALN, nor is there any legitimate reason to refuse to allow the pardon attorney to testify today about how the clemency process works. That is all we ask.

Let me assure the administration that this committee will perform its oversight responsibilities. Now, this clemency deal is yet another example of this administration sending the wrong message to criminals, be they foreign spies, gun offenders or, as in this case, terrorists. At the very least, I hope that through our efforts these last several days Congress can do its part to help to restore the principle and send the message that the United States does not make deals with terrorists.

I want to thank our witnesses here today. The President's decision to offer clemency to terrorists has grave negative consequences. And I appreciate the witnesses' testimony here today and their efforts to help us to understand those principles.

I think the testimony here today has refuted the administration's claim that these people were not involved in violent acts of terrorism. And to the extent any may still believe that these people were not the actual killers and that that is relevant to the question of clemency, it is only because of the vigilance by law enforcement community that we know what we know today.

And I think the judge in the Illinois trial had it right when he said that the particular bombings at issue in that trial did not happen because of ``one of the finest examples of preventive law enforcement that has ever come to this Court's attention in the 20-some odd years he has been a judge. Good

preventive law enforcement succeeded in keeping these defendants from doing what they were going to do. They were going to plant bombs in public buildings during a holiday.''

Now, I, for one, am personally glad that law enforcement was successful in preventing more tragedies than that case, and I hope that the President's clemency offer does not undermine law enforcement's good work and the safety of our citizens.

I think there are people that are really worried about what's happened here, especially those who testified, those who were jurors and others who I believe are very worried because of this type of an action.

Now, I want to thank each of you witnesses for appearing here today. It is not easy for any of you to have appeared, I understand that. And it is awfully difficult to talk about these things, as we could see. But you have done our community, our country, a service, in my opinion, each and every one of you. And we are very much in your debt and in your gratitude.

And you folks at the FBI, the FBI comes under a lot of criticism from time to time, but for those of us who work regularly with the FBI, we realize we would really be in trouble in this country if it was not for the efforts of the FBI against terrorists. It is one of the things I have to say the administration is holding its own on. But it has been primarily because the FBI and the police people in our society, the police forces in this society, that work in conjunction to try and prevent acts of terrorism in our country.

But this is something that we are going to have to face in much more escalated terms over the coming years, and I do not want to see more victims like those who have died, like Mr. Pascarella, Mr. Newhall, their friends who were killed and injured in these matters, and I do not want to see that happen. So I want to thank you FBI folks for the good work that you have done in the past. You deserve your retirement. You have earned it. And our current FBI is doing an excellent job, in spite of some of the criticisms that come their way. And law enforcement, in general, is doing a very good job.

And, Mr. Gallegos, I am very proud to work with you, as we always have and will continue to do so on this committee.

Mr. Gallegos. Thank you, Mr. Chairman.

The Chairman. With that, we will recess until further notice, thanking all of you for being here.

[Whereupon, at 11:42 a.m., the committee was adjourned.]

THE JUSTICE DEPARTMENT'S ROLE AND THE FALN

WEDNESDAY, OCTOBER 20, 1999

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 9:15 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Thurmond, Grassley, Specter, Kyl, Ashcroft, Abraham, Sessions, and Leahy.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The Chairman. Well, I apologize for not being here exactly

on time, but I am in the middle of a number of conferences, and it takes a great deal of my time every morning just to keep up with everything.

Over the past several weeks, this committee has examined hundreds of documents and other materials provided by the Department of Justice, the White House, and other law enforcement officials. We also have spoken with law enforcement persons knowledgeable about the FALN and Los Macheteros organizations and the cases involved in this controversy. Our investigation has led us to three troubling conclusions:

First, the President's proffered reasons in support of the clemency do not survive scrutiny;

Second, the Justice Department appears to have ignored its own rules for handling clemency matters and modified its original recommendation against clemency; and

Third, the Justice Department itself has concluded that the release of these individuals may well increase the risk of domestic terrorism.

The President's stated rationales for the clemency have been, first, that the prisoners were not directly charged with crimes that resulted in bodily injury; second, that they had received unduly harsh sentences that were more severe than those set forth by today's Sentencing Guidelines; and, third, that they have renounced violence. The evidence, in my view, tells a different story.

Our review has uncovered documents which clearly demonstrate the violent nature of the charges against the individuals who received clemency. As the first chart here shows, paragraph 3 of the December 1980 Federal indictment out of Chicago, IL, reads as follows:

``It was further part of the said conspiracy that the conspirators would seek to achieve their goals and thereby oppose by force the authority of the United States by means of force, terror and violence, including the construction and planting of explosive and incendiary devices at banks, stores, office buildings and government buildings, including the following locations and dates * * *''

Now, the list of bombings then goes on for more than two pages. The defendants were charged with completing these specific bombings as overt acts in their seditious conspiracy--just like the World Trade Center bombers and those who conspired with them. There can be no dispute; these were violent crimes committed by violent people.

The second unconvincing justification given for the clemency decision--cited by both the President and the Department of Justice--is the assertion that the prison sentences served by the FALN terrorists exceeded the sentences that the same people would receive if convicted of the same crimes today. Again, this is false. Under today's Sentencing Guidelines, the FALN prisoners would receive sentences equal to, if not greater than, the sentences they received for their crimes. The U.S. Sentencing Commission has provided us with an analysis of the relevant Guideline provisions. The Commission concludes that the defendants convicted of seditious conspiracy ``would be in a guideline range of at least 360 months to life,'' a 30-year minimum sentence. This is the equivalent of a much longer pre-Guidelines sentence because parole has been eliminated under the Guidelines. Under the Guidelines, a 30-year sentence means 30 years. None of the terrorists here served 30 years.

Finally, the President also stated that a key factor was the fact that these individuals had renounced violence. Their own statements and notes produced from meetings with their representatives suggest otherwise. As the next chart shows, in a transcribed prison telephone conversation on September 7,

1999--3 weeks after the offer of clemency--Adolfo Matos stated that ``I have nothing to be ashamed of, or feel that I have to ask for forgiveness. I don't have to ask for forgiveness because my conscience is at peace with itself.'' He also stated that his ``desire has gotten stronger, to the point where I want to continue. Continue to fight and get involved with my people.'' This is not remorse, yet he was set free.

Given the Department's recognition of the threat these individuals pose to our national security, the committee set out to examine the process undertaken by the Department of Justice to consider the merits of these particular clemency petitions and examine whether the Department followed its own rules or bowed to pressure and softened its recommendation regarding clemency.

Our investigation has uncovered evidence that longstanding policies and rules for the consideration of clemency were apparently ignored. The U.S. Attorney's Manual states that, ``Commutation \* \* \* is an extraordinary remedy that is rarely granted,'' and that ``Appropriate grounds for considering commutation have traditionally included disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government,'' such as ``cooperation with investigative or prosecutive efforts * * *''

There was no medical reason for any of the clemency offers. The sentences received by these defendants are consistent with the sentences they would have received under the Sentencing Guidelines. Finally, nothing produced by the Department to date gives any suggestion that any of the 16 offered clemency ever cooperated with law enforcement regarding open cases or the apprehension of fugitives.

Moreover, despite the Department's rules requiring a formal petition for clemency, no personal petitions for clemency were filed in this matter prior to the clemency offer made by the President. This was not a mere oversight. The FALN prisoners refused to file such a petition because they do not recognize the authority of the United States. The Department may assert that this was not unusual or unprecedented, but as they stated in talking points they prepared and sent to the White House, it was ``very unusual.''

Another unusual departure from the standard case is the Justice Department's submission of two reports to the President.

The evidence shows that the Justice Department initially fulfilled its obligation--and complied with its internal regulations--when some 3 years ago the Department submitted to the White House a report recommending against clemency for the prisoners. As part of its production to the committee, the Department produced a letter that Pardon Attorney Margaret Love sent to White House Counsel Charles Ruff referencing a report sent December 16, 1996, ``recommending denial of clemency for 17 Puerto Rican prisoners.'' The Department also produced documents indicating that the two U.S. attorneys offices involved in prosecuting the prisoners strongly supported the recommendation against clemency.

The privilege log and other documents the Department produced to the committee indicate that the Department submitted another report in the summer of 1999. Public news reports indicate that this report, rather than offering the required recommendation in favor of or against clemency, ``made no specific recommendation.'' Instead, ``the report contained what law enforcement officials said was a more carefully worded analysis.''

What happened between the first report in December 1996 and the second one in the summer of 1999 that justified a re-examination and apparent change in the Department's

recommendation?

A vigorous lobbying and public relations campaign by various political and religious groups seems to have persuaded someone to have changed their mind. While victims were shut out of the process, those groups supporting clemency were granted access to some of the highest-level officials in both the White House and the Department on at least nine different occasions. Notes of some of those meetings suggest the Department provided advice to the supporters on how to create a record to justify clemency.

More troubling than the one-sided public relations campaign by the friends of the FALN is the clear evidence that the Department knew better. The Justice Department knew that the U.S. attorneys who were consulted all recommended against clemency. The Department knew that there were open investigations involving the FALN and Los Macheteros and that none of the people being considered for clemency had provided any cooperation toward solving those cases. The Department knew that there were dangerous fugitives still at large who were associated with the clemency petitioners.

For example, as this next poster shows, Victor Manuel Gerena was a co-defendant with Juan Segara Palmer and the others who received clemency in the Wells Fargo robbery in Connecticut. Gerena is still listed as one of the FBI's 10 Most Wanted. Yet, inexplicably, clemency--or a change in the Department's recommendation--was apparently never conditioned on Segara Palmer or the others providing truthful information about Gerena's whereabouts. Now, I find that personally very disturbing.

While the friends of the FALN were lobbying for clemency with the Justice Department and the White House, the victims of the FALN were kept in the dark. Even worse, in 1998, Joseph Conner, whose father the FALN killed in the Fraunces Tavern bombing, was told by the Justice Department that, ``The Federal Bureau of Investigation remains committed in its investigative efforts to apprehend William Morales. It is our hope that by aggressively pursuing and prosecuting terrorists, we will deter others who might contemplate committing such crimes.'' Now, that is the FBI, and that is in 1998.

Now, how can we tolerate the Justice Department's decision to deliver this message to FALN victims when at the same time members and leaders of the FALN and Los Macheteros are being actively considered for clemency without being required to provide any cooperation with respect to open investigations and fugitives like Morales?

Finally, as recently as September 1999, the Attorney General herself identified the FALN and Los Macheteros as terrorist organizations posing an ongoing threat to our Nation. As you can see on the next chart, in the Attorney General's Five-Year Interagency Counterterrorism and Technology Crime Plan, the Justice Department concludes that, ``Factors which increase the present threat from these groups''--that is, the FALN and Los Macheteros--``include * * * the impending release from prison of members of these groups jailed for prior violence.'' The Clinton administration agrees--the President's offer of clemency increased the current terrorist threat to the American people by their own words.

In closing, the New York Times noted in an editorial last month, ``President Clinton has not adequately explained how he concluded that the release posed no danger to the public.'' My hope is that our witnesses today can provide us with an answer to this and other important questions.

In the end, my goal is to ensure that the Department of Justice is not party to a travesty of this sort in the future, and I hope today's witnesses will pledge their cooperation in

developing reforms to accomplish this objective. And I have great hopes that that is going to be the case.

[The prepared statement of Senator Hatch follows:]

Prepared Statement of Senator Orrin G. Hatch

In granting clemency to 16 convicted terrorists and members of the FALN and Los Macheteros, President Clinton set free individuals who had engaged in sedition and openly advocated war against the United States and its citizens. The FALN and Los Macheteros--including the clemency recipients--have actively waged such a war by, among other acts, planting over 130 bombs in public places including shopping malls and restaurants.

Over the past several weeks, this Committee has examined hundreds of documents and other materials provided by the Department of Justice, the White House, and other law enforcement officials. We also have spoken with law enforcement persons knowledgeable about the FALN and Los Macheteros organizations and the cases involved in this controversy. Our investigation has led us to three troubling conclusions:

- First, the President's proffered reasons in support of the clemency do not survive scrutiny;
- Second, the Justice Department appears to have ignored its own rules for handling clemency matters and modified its original recommendation against clemency; and
- Third, the Justice Department itself has concluded that the release of these individuals may well increase the risk of domestic terrorism.

a. the president's flawed justification for clemency

The President's stated rationales for the clemency have been, first, that the prisoners were not directly charged with crimes that resulted in bodily injury; second, that they had received unduly harsh sentences that were more severe than those set forth by today's Sentencing Guidelines; and third, that they have renounced violence. The evidence tells a different story.

Our review has uncovered documents which clearly demonstrate the violent nature of the charges against the individuals who received clemency. Paragraph three of the December 1980 indictment out of Chicago, Illinois reads as follows:

It was further part of the said conspiracy that the conspirators would seek to achieve their goals and thereby oppose by force the authority of the United States by means of force, terror and violence, including the construction and planting of explosive and incendiary devices at banks, stores, office buildings and government buildings, including the following locations and dates:

The list of bombings then goes on for more than 2 pages.\1\ The defendants were charged with completing these specific bombings as overt acts in their seditious conspiracy--just like the World Trade Center bombers and those who conspired with them. The Department knew that these bombings resulted in immense property damage and at least one fatality.\2\ There can be no dispute; these were violent crimes committed by violent people. It is no mere coincidence that the FALN's decade-long bombing campaign ceased immediately after these FALN members were locked behind bars.

\1\ DoJ #002149-152.

\2\ DoJ #10140144-45.

The second unconvincing justification given for the clemency decision--cited by both the President and the Department of Justice--is the assertion that the prison sentences served by the FALN terrorists

exceeded the sentences that the same people would receive if convicted of the same crimes today. This is false. Under today's sentencing guidelines, the FALN prisoners would receive sentences equal to, if not greater than, the sentences they received for their crimes. The United States Sentencing Commission has provided us with an analysis of the relevant Guideline provisions.\3\ The Commission concludes that the defendants convicted of seditious conspiracy would be in a guideline range of at least 360 months to life.\4\ This is the equivalent of a much longer pre-Guidelines sentence because parole has been eliminated under the Guidelines. Under the Guidelines, a 30-year sentence means 30 years. None of the terrorists here served 30 years.

\3\ Letter from Tom McGrath to Chairman Orrin G. Hatch, dated October 19, 1999, at 1.

\4\ Id.

Finally, the President also stated that a key factor was the fact that these individuals had renounced violence. Their own statements, and notes produced from meetings with their representatives, suggest otherwise. In a transcribed prison telephone conversation on September 7, 1999--three weeks after the offer of clemency--Adolfo Matos stated that ``I have nothing to be ashamed of, or feel that I have to ask for forgiveness. I don't have to ask for forgiveness because my conscience is at peace with itself.'' \5\ He also stated that his ``desire has gotten stronger, to the point where I want to continue. Continue to fight and get involved with my people.'' \6\ The FALN, and the clemency recipients, far from renouncing their beliefs favoring violent attacks against the United States, have re-affirmed their pledge to achieve their political goals by any means.

\5\ DoJ #10120001.

\6\ Id.

b. violations of department of justice clemency guidelines

Given the Department's recognition of the threat these individuals pose to our national security, the Committee set out to examine the process undertaken by the Department of Justice to consider the merits of this particular clemency request and examine whether the Department followed its own rules or bowed to pressure and softened its recommendation regarding clemency.

Our investigation has uncovered evidence that longstanding policies and rules for the consideration of clemency were apparently ignored. The United States Attorneys' Manual states that:

Generally, commutation of sentence is an extraordinary remedy that is rarely granted. Appropriate grounds for considering commutation have traditionally included disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, e.g., cooperation with investigative or prosecutive efforts that has not been adequately rewarded by other official action. A combination of these and/or other equitable factors may also provide a basis for recommending commutation in the context of a particular case.\7\

\7\ U.S.A.M. Sec. 1-2.113.

For starters, I am not aware of any information that suggests there was a medical reason for any of the clemency offers, so that factor does not apply. Second, as will be demonstrated, the sentences received by these defendants are consistent with the sentences they would have received under the Sentencing Guidelines. Moreover, they are consistent with the sentences of other people who have been convicted of seditious conspiracy. Finally, nothing produced by the Department to date gives any suggestion that any of the 16 offered clemency ever cooperated with

law enforcement regarding open cases or the apprehension of fugitives.

The Department's rules also require that an individual seeking clemency submit a petition to the Pardon Attorney.\8\ Here, however, the Department began entertaining the possibility of clemency for the FALN prisoners even though no personal petitions for clemency had been filed. Indeed, none of the prisoners ever submitted a clemency petition prior to being offered clemency by the President. And as the Department recognized, the absence of a petition was not a mere oversight: the FALN prisoners refused to file such a petition because they do not recognize the authority of the United States. Yet, despite the absence of those petitions, the Department went forward with the clemency process. The Department may assert that this was not unusual or unprecedented, but as they stated in talking points they sent to the White House, it was ``very unusual.''\9\

\8\ 28 C.F.R. Sec. 1.1.

\9\ DoJ #1040102-05.

Another unusual departure from the standard case is the Justice Department's submission of two reports to the President--one that recommended against granting clemency, and a subsequent report that apparently withdrew that recommendation and reportedly took no position for or against clemency. Justice Department rules require that in every clemency case the Department ``shall report in writing [its] recommendation to the President, stating whether in [its] judgment the President should grant or deny the petition.''\10\ The rules do not contemplate the reopening of a completed review--and certainly do not contemplate a report that does not contain an up or down recommendation on clemency.

\10\ 28 C.F.R. Sec. 1.6; see also United States Attorneys' Manual (`U.S.A.M.') Sec. 1-2.110.

The evidence shows that the Justice Department initially fulfilled its obligation--and complied with its internal regulations--when, some three years ago, the Department submitted to the White House a report recommending against clemency for the prisoners. As part of its production to the Committee the Department produced a letter that Pardon Attorney Margaret Love sent White House Counsel Charles Ruff referencing a report sent December 16, 1996 ``recommending denial of clemency for 17 Puerto Rican prisoners.''\11\ The Department also produced documents indicating that the two U.S. Attorneys' offices involved in prosecuting the prisoners strongly supported the recommendation against clemency.\12\

\11\ DoJ #1041964.

\12\ DoJ #10140137-41.

The privilege log and other documents the Department produced to the Committee indicate that the Department submitted another report in the summer of 1999.\13\ Public reports in the New York Times indicate that this report, rather than offering the required recommendation in favor of or against clemency, ``made no specific recommendation.''\14\ Instead, ``the report contained what law enforcement officials said was a more carefully worded analysis.''\15\ According to the Times, the report set out various options for the President without making a recommendation.

\13\ DoJ #1041926.

\14\ David Johnston, Clinton Went Against Advice on Clemency, 7th President Agreed to Free 16 Puerto Rican Nationalists Even Though Top Law Enforcers Were Against It, New York Times, August 27, 1999 at A1.

\15\ Id.

What happened between the first report in December 1996 and the

second one in the summer of 1999 that justified a reexamination and apparent change or softening of the Department's recommendation?

Neither the acts for which the prisoners were convicted, nor the sentences imposed, changed between the December 1996 report and the new report issued by the Department last summer, so neither explains why the Department would issue a second report.

It disturbs me greatly to report that, although nothing new developed in the cases of the FALN members during that time, a vigorous lobbying and public relations campaign by various political and religious groups seems to have persuaded someone to change their mind. While victims were shut out of the process, those groups supporting clemency were granted access to some of the highest-level officials in both the White House and the Department on at least 9 occasions. Notes of some of those meetings suggest the Department provided advice to the supporters on how to create a record to justify clemency.\16\

 \16\ DoJ #1041847-53.

More troubling than the one-sided public relations campaign by the friends of the FALN is the clear evidence that the Department knew better. The Justice Department knew that the U.S. Attorneys who were consulted all recommended against clemency. The Department knew that there were open investigations involving the FALN and Los Macheteros, and that none of the people being considered for clemency had provided any cooperation toward solving those cases. The Department knew that there were dangerous fugitives still at large who were associated with the clemency petitioners. William Morales, one of the leaders of the FALN is reportedly hiding out in Cuba. Victor Manuel Gerena, was a co-defendant with Juan Segara Palmer and the others charged with the Wells Fargo robbery in Connecticut. Gerena is still listed as one of the FBI's 10 Most Wanted. Yet, inexplicably, clemency--or a change in the Department's recommendation--was apparently never conditioned on Segara Palmer or the others providing truthful information about Gerena's whereabouts. I find that profoundly disturbing.

While the friends of the FALN were lobbying for clemency with the Justice Department and the White House, the victims of the FALN were kept in the dark. The Department allowed the many victims of the FALN bombs to learn of their attackers' release just like the rest of us did: by seeing it on the evening news. Even worse, Joseph Conner, whose father the FALN killed in the Fraunces Tavern bombing, was told by the Justice Department that: ``the Federal Bureau of Investigation remains committed in its investigative efforts to apprehend William Morales. It is our hope that by aggressively pursuing and prosecuting terrorists, we will deter others who might contemplate committing such crimes.''
 \17\

 \17\ Letter dated January 6, 1998 to Mr. Joseph F. Conner, from Ronnie L. Edelman, Department of Justice, Principal Deputy Chief of the Terrorism and Violent Crimes Section.

How can we tolerate the Justice Department's decision to deliver this message to FALN victims when, at the same time, members and leaders of the FALN and Los Macheteros are being considered for clemency without being required to provide any cooperation with respect to open investigations and fugitives like Morales?

c. the effect of the clemency on terrorist activity

Finally, we must ask, what message does the clemency send to terrorists about how seriously we take our ``policy of vigorously investigating and prosecuting those acts of terrorism when we release those whom we prosecute?

The impact this will have on terrorism is disturbing. As the draft letter from Director Freeh to Chairman Henry Hyde indicates, the FBI advised the Justice Department that ``the release of these individuals would psychologically and operationally enhance'' the ongoing violent and criminal activities of Puerto Rican terrorist groups. The FBI also

pointed out that any such pardon of the ``currently incarcerated terrorists would likely return committed, experienced, sophisticated and hardened terrorists to the clandestine movement.'' \18\

\18\ Draft letter from FBI Director Louis Freeh to Representative Henry J. Hyde.

Finally, as recently as September 1999, the Attorney General herself identified the FALN and Los Macheteros as terrorist organizations posing an ongoing threat to our nation. In the Attorney General's Five-Year Interagency Counterterrorism and Technology Crime Plan, the Justice Department concludes that ``Factors which increase the present threat from these groups [the FALN and Los Macheteros] include renewed activity by a small minority advocating Puerto Rican statehood, the 100-year anniversary of the U.S. presence in Puerto Rico, and the impending release from prison of members of these groups jailed for prior violence.'' \19\ The Clinton Administration agrees-- the President's offer of clemency increased the current terrorist threat to the American people.

\19\ Five-Year Interagency Counterterrorism and Technology Crime Plan, September 1999, at 11 (emphasis added).

In closing, the New York Times noted in a editorial last month, ``President Clinton has not adequately explained how he concluded that the release posed no danger to the public.'' [N.Y. Times, Sept. 23, 1999] My hope is that our witnesses can provide us with an answer to this and other important questions.

In the end, my goal is to ensure that the Department of Justice is not party to a travesty of this sort in the future. I hope today's witnesses will pledge their cooperation in developing reforms to accomplish this objective.

The Chairman. We will wait for the ranking member to come, and while we are waiting, we will now turn to these important issues before the committee today. I would like to thank all panelists for coming here today and would introduce them to the committee.

Our first witness is the Deputy Attorney General, the Honorable Eric Holder. As part of his duties as Deputy Attorney General, he supervises the work of the Office of Pardon Attorney.

Our second witness is the Pardon Attorney, Mr. Roger Adams. Welcome, Mr. Adams. Mr. Adams heads the Office of Pardon Attorney which processes and investigates applications for clemency.

So we will turn to you first, Mr. Holder, and then we will have some questions for you.

PANEL CONSISTING OF HON. ERIC HOLDER, DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC; AND ROGER ADAMS, PARDON ATTORNEY, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

STATEMENT OF HON. ERIC HOLDER

Mr. Holder. Thank you, Mr. Chairman.

Mr. Chairman, Senator Sessions, I welcome the opportunity to appear before you today. With me, as was indicated, is Roger Adams, who is the Pardon Attorney. We will do our best to address the questions that you have relating to the conditional offers of clemency that the President recently granted to 16 Puerto Rican nationalists.

I wish to begin my remarks, however, by extending my heartfelt sympathy to those victims and their families whose lives were tragically affected by the criminal conduct of the

FALN. It is difficult to fully comprehend the extent of the pain and suffering these victims were forced to endure. I have spent my career as a prosecutor and as a judge. And as U.S. attorney, I met frequently with victims of violence, and as Deputy Attorney General, I have done my best to ensure that crime victims are treated properly and respectfully throughout the criminal justice system. And one of the most important points that I have learned from my 23-year career is that every tragic story of victimization is unique and unforgettable. And so I want the victims of FALN violence to know that our thoughts and prayers remain with them now and in the future.

As the committee is aware, the President has asserted executive privilege in regard to his grant of conditional clemency to the nationalists. We at the Justice Department have reviewed this assertion of privilege, and we have concluded that there is a firm legal basis and a historical precedent for such an act. As a consequence, we are not able to discuss with you advice and other deliberative communications to the President regarding his clemency decision, and we are not able to provide you with copies of deliberative documents and written communications generated within and between the Department of Justice and the White House in connection with the preparation of that advice. Moreover, because the underlying facts of the FALN case are inextricably interwoven into the analysis of the clemency request, I generally will not be able to comment on the facts of this matter. I want you to know that we at the Justice Department are being and will continue to be as responsive to your requests and inquiries as is possible, consistent with the constitutional constraints that have been placed upon us.

Within 24 hours of this committee passing its resolution regarding the conditional clemency, I sent a memorandum to all 47 Department components and divisions and to all 93 U.S. attorneys throughout this country directing them to immediately engage in a thorough review of their files for responsive records. As a result of that massive search, we have delivered to you more than 22,000 pages of documents pertaining to this matter. The documents include records from the U.S. Parole Commission, the Bureau of Prisons, the Office of the Pardon Attorney, the Criminal Division, the Civil Division, and the Justice Management Division. Further, we are in the process of duplicating approximately 1,200 hours of tape-recorded telephone conversations obtained from the Bureau of Prisons. Our search for documents is continuing, and we will produce additional responsive material as it is located and processed.

Additionally, the Department has provided to the committee a privilege log identifying those documents which are subject to the President's assertion of executive privilege. From the log you can see that in 1996, in accordance with Department of Justice regulations, the Department submitted a written report and a recommendation to the White House regarding whether the President should grant or deny the petition for clemency, and that there were subsequent communications between the Department and the White House on the subject of clemency for the Puerto Rican nationalists as recently as 2 months ago. However, because of the President's assertion of privilege, I am not at liberty to disclose the contents or the substance of the report, recommendations, or communications. Nevertheless, consistent with these constitutional constraints, we at the Justice Department will continue to make every effort to provide this committee with as many responsive documents and as much relevant information as we can.

That being said, I believe that it is incumbent upon all of us to ensure that congressional inquiries do not have a chilling effect upon the pardon process. If key participants in

the formulation of the Department's pardon advice to the President were to know that their views could be subject to the intense public scrutiny of a congressional investigation, there is a very significant risk that these people would hesitate to share their candid, objective, and perhaps unpopular opinions in certain cases.

Now, this is just not a theoretical concern. In the past, individuals have asked for strict assurances that their views would remain confidential before they offered their thoughts on pardon requests by politically powerful figures. I would only ask that we all be mindful of this concern as we begin this hearing today.

I would now like to have, with the chairman's permission, the Pardon Attorney, Roger Adams, describe for you the Department's procedures with respect to the handling of clemency petitions.

[The prepared statement of Mr. Holder follows:]

Prepared Statement of Deputy Attorney General Eric Holder

Mr. Chairman and distinguished Members of the Judiciary Committee, I welcome the opportunity to appear before you today. With me is Roger Adams, the Pardon Attorney. We will do our best to address the questions you have relating to the conditional offers of clemency that the President recently granted to sixteen Puerto Rican nationalists.

I wish to begin by extending my heartfelt sympathy to those victims and their families whose lives were tragically affected by the criminal conduct of the FALN. It is difficult to fully comprehend the extent of the pain and suffering these victims were forced to endure. I have spent my career as a prosecutor and a judge. As United States Attorney, I met frequently with victims of violence and, as Deputy Attorney General, I have done my best to ensure that crime victims are treated properly and respectfully throughout the criminal justice system. And one of the most important points I have learned from my 23-year career is that every tragic story of victimization is unique and unforgettable. And so, I want the victims of FALN violence to know that our thoughts and prayers remain with them now and in the future.

I would like to briefly address the Department's procedures for reviewing and making recommendations to the President on clemency petitions. Mr. Adams will discuss these issues in more detail in his testimony.

In general terms, the Office of the Pardon Attorney reviews in the first instance petitions for clemency filed by federal prisoners. If it appears that the petitioner is eligible to apply for clemency and the petition contains sufficient information, the Pardon Attorney begins an investigation into the facts and circumstances of the petitioner's case. Official records such as the presentence report that was prepared for the sentencing judge, reports from the Bureau of Prisons on the petitioner's behavior while incarcerated are checked for relevant information. On occasion, the Pardon Attorney also contacts the component of the Department of Justice which prosecuted the case, for example the Criminal Division or a particular U.S. Attorney's Office.

After completing his investigation, the Pardon Attorney prepares a report and recommendation for the White House. These reports are sent to the Office of the Deputy Attorney General for review. After that review, the report and recommendation are transmitted to the White House over my signature as Deputy Attorney General. It is the exclusive prerogative of the President to decide what actions he will then take regarding the petition for clemency.

You have also asked me to address what steps the Department took in order to obtain the records that the Committee sought pursuant to the resolution which was passed on September 23. On September 24, I sent a memorandum to the heads of all 47 Department components and divisions and all 93 United States Attorneys. That memorandum directed the component heads and U.S. Attorneys to immediately undertake a prompt

and thorough review of their files for responsive records. In addition to my memorandum, every U.S. Attorney and each component head received the text of the Resolution for reference. Each Department component, division, and United States Attorney's office designated an attorney responsible for searching for responsive documents. The recipients were directed to identify, obtain, review, and, as appropriate, produce documents that you requested, and they did so.

We have produced over 22,000 pages of responsive documents for you. The documents include records from the U.S. Parole Commission, the Bureau of Prisons, the Office of the Pardon Attorney (OPA), the Criminal Division, the Civil Division, and the Justice Management Division, among other components. We have provided over seven hundred audio tapes of recorded telephone conversations obtained from the Bureau of Prisons. Our efforts are continuing and we will produce additional responsive materials as they are located and processed.

Additionally, the Department has provided to the Committee a ``privilege log'' identifying those documents which are subject to the President's assertion of executive privilege. From the log you can see that in 1996, in accordance with Department regulations, the Department submitted a written report and recommendation to the White House regarding whether the President should grant or deny the petition for clemency, and that there were subsequent communications between the Department and the White House on the subject of clemency for the Puerto Rican nationalists as recently as two months ago. However, because of the President's assertion of privilege, I am not at liberty to disclose the contents or substance of the report, recommendations, or communications. Nevertheless, consistent with these constitutional constraints, we at the Department of Justice have made, and will continue to make, every effort to provide this Committee with as many responsive documents and as much relevant information as we can.

I would like to address in more detail the issue of executive privilege. As you know, the President has asserted executive privilege with respect to documents and testimony that reflect advice sought by and provided to the White House with respect to the offers of clemency and the deliberations within the Department in connection with the preparation of that advice. The Department of Justice is obligated to respect and follow that assertion of the privilege.

We believe that there is a solid legal basis for the President's assertion of executive privilege here. Executive privilege is a necessary corollary of the executive function vested in the President by Article II of the Constitution. This privilege, which protects, among other things, the confidentiality of presidential communications and the deliberative processes of the executive branch, has been asserted by numerous Presidents from the earliest days of our Nation, and has been explicitly recognized by the Supreme Court. The privilege is properly asserted where, as here, the President's need to maintain the confidential nature of presidential communications and executive branch deliberations outweighs Congress's need for the information contained in privileged documents.

The Committee's request for the documents generated during the deliberations relating to the President's recent grant of clemency presents a particularly compelling legal basis for the assertion of executive privilege. Under the Constitution, the granting of clemency pursuant to the pardon power is unquestionably an exclusive province of the executive branch. Thus, while the Committee has undoubted authority to oversee this Department's discharge of its statutory duties, the Department was not discharging any statutory duty or exercising any statutory authority when it conducted an evaluation of the petition for clemency made on behalf of the Puerto Rican nationalist prisoners. Rather, the Department was providing advice and assistance to the President in the discharge of his exclusive constitutional prerogative. The Department has long declined to share with Congress information concerning the advice and assistance it provides to the President on pardon matters.

The documents in the Department's files that are the subject of the

President's assertion of privilege fall squarely within the well-recognized scope of executive privilege. First, the documents include the Department's advice to the President and his staff on these clemency petitions. Advice provided to the President unquestionably falls within the scope of executive privilege. In its 1974 decision in *United States v. Nixon*, the Supreme Court recognized the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution. (418 U.S. at 708).

Executive privilege is not limited to advice and other communications made to the President. Rather, it is well-established that the privilege also applies to intra-agency deliberations, such as the deliberative communications within the Department of Justice in connection with the preparation of advice to the White House on this clemency matter. The Supreme Court also recognized in *United States v. Nixon* that executive privilege covers ``communications between high Government officials and those who advise and assist them in the performance of their manifold duties.'' 418 U.S. at 705. The Court has stated that ``the importance of this confidentiality is too plain to require further discussion.'' *Id.* The Department has provided the Committee with a copy of a letter we sent to a Member of the Committee in 1991. That letter surveyed the precedents supporting the longstanding executive branch position that executive privilege ``extends not only to communications to and from the President, but [also] to deliberative communications between the President's subordinates and those who, in turn, advise them.'' Letter to Senator Howard M. Metzenbaum, from W. Lee Rawls, Assistant Attorney General, Office of Legislative Affairs, at 1 (July 1, 1991). Indeed, more assertions of executive privilege have concerned deliberations between and within agencies than have concerned actual presidential communications.

Disclosure of the documents that are subject to the President's assertion of privilege would have precisely the chilling effect that the privilege is designed to prevent. There is a significant risk that the Office of the Pardon Attorney will not be able to obtain ``candid, objective, and even blunt or harsh opinions'' (*United States v. Nixon*, 418 U.S. at 708) from other components within the Department or freely provide such opinions and views to senior Department officials if the key participants in the formulation of the Department's advice know that their views will be subject to the intense public scrutiny of a congressional investigation. Similarly, senior Department officials will not be able to convey such opinions to the Counsel for the President, nor will they be ``free to explore alternatives,'' *id.*, if their communications with the White House and with their staffs are not protected from disclosure. Such a chilling effect would be particularly troublesome here, where Department officials are formulating advice to assist the President in the discharge of an exclusive presidential prerogative, and Congress therefore has no authority to regulate the nature of the advice that the President seeks or receives.

Thank you again for the opportunity to appear before you on this important matter. The Department of Justice wants to continue to work with the Committee to appropriately address any issues relating to this matter.

The Chairman. Thank you.

Mr. Adams, we will take your statement.

STATEMENT OF ROGER ADAMS

Mr. Adams. Good morning, Mr. Chairman and members of the committee. As Mr. Holder has indicated and as you have indicated, Mr. Chairman, my name is Roger Adams, and I am the Pardon Attorney at the Department of Justice.

Initially, Mr. Chairman, let me add my voice to those who have expressed sympathy for the victims of FALN bombings. For most of my time in the Department, I was in the Criminal Division, and a good part of that was in a section involved with the enforcement of firearms and explosives laws. And I know what bombs and what illegal firearms can do, and I know that the victims of FALN bombings and the survivors of those victims are suffering to this very day, and they have my sympathy.

Mr. Chairman, the office that I head has the unique and singular mission of assisting the President in exercising his powers in executive clemency matters. My small staff and I do this largely through written memoranda signed by the Deputy Attorney General and sent to the White House.

I understand one of the things in which the committee is interested is how a request for a commutation of sentence is processed by my office. As I did for the committee staff a few weeks ago, I will go through the process we follow.

First, a Federal inmate files a petition for commutation of his sentence with the Office of the Pardon Attorney. He is eligible to apply as long as he had actually reported to prison and begun serving his sentence and is not challenging his conviction or sentence through appeal or collateral attack. The petition form requires the inmate or his attorney--if he is represented by counsel--to state such information as the institution in which he is being held, the offenses of which he has been convicted, and the circumstances leading to his conviction. The petitioner is free to append to the application or to submit at a later date any additional documentation he believes will support his request.

When my office receives a petition, we review it to ensure the applicant is eligible to apply, and we begin our investigation. The first step is to contact the warden at the Federal prison where the inmate is being held and request copies of the judgment of conviction, the pre-sentence report, and his most recent prison progress report. The judgment of conviction gives us the official record of the offense or offenses of which the person was convicted. The pre-sentence report, prepared by the U.S. Probation Office prior to sentencing, gives a good and contemporaneous account of the crime and a description of the rest of the defendant's criminal history. The progress report, prepared periodically by the Bureau of Prisons, details such things as the prisoner's adjustment to incarceration, his progress on paying fines or restitution, and disciplinary history while in prison.

At this stage of our investigation, we also check legal databases for reported court opinions concerning the petitioner's conviction and other crimes for which he has been convicted. In the large majority of cases, this information is sufficient to enable my office to prepare a brief report--usually around 500 words--to the White House. These reports are sent to the Deputy Attorney General's Office, reviewed by his staff, and transmitted under the Deputy Attorney General's signature to the Office of the White House Counsel. The vast majority of commutation petitions are denied.

In a minority of cases, when my office's initial review of the information raises questions of material fact or suggests that the application for commutation may have some merit or if the case presents significant issues or is likely to attract wide attention, my office does some additional work. We contact the U.S. Attorney's Office whose office prosecuted the case.

When we go to the U.S. attorney, we request comments and recommendations on the commutation request, and we may ask for additional factual information concerning the case. We also send along to the U.S. attorney a copy of the provision in the U.S. Attorney's Manual concerning the role of the U.S. attorney in clemency matters. One of the things the U.S. attorney can provide, and which is expressly mentioned in the manual, is information concerning victim impact of the petitioner's crime.

In cases in which we solicit the views of the U.S. attorney, we also contact the sentencing judge, either directly or through the U.S. attorney, for his or her comments and recommendations on the clemency request, if the judge is willing to share them. While we are doing this, my office also receives and maintains for consideration in the petitioner's file correspondence sent by the petitioner and third parties, including, in many cases, Members of Congress, either to the Department or the White House regarding the commutation application. If representatives of the prisoner, either his attorney or a family member, seek a meeting and are willing to travel to meet in my office, we will meet with their representatives and listen to whatever additional information they care to make on the prisoner's behalf.

After we have gathered the information I have described, my office then drafts a report and recommendation as to the merits of the commutation request. The report is actually a memorandum for the Deputy Attorney General's signature. The report is sent to the Deputy Attorney General's Office where it is typically reviewed by a member of his staff and is signed by the Deputy. Of course, the Deputy Attorney General is free to make changes in the report, but once it meets with his approval, he signs it and it is transmitted to the White House Counsel's Office.

Thereafter, when he deems it appropriate, the President acts on the commutation petition and either grants it or denies it, as he sees fit. Once the President acts on the petition, my office is notified, and we notify the petitioner through the warden of his institution or through his attorney, if he was represented by counsel. If the President has decided to grant clemency, we also prepare a warrant of commutation. Once the warrant is signed by the President, we would transmit it or a copy to the Bureau of Prisons to accomplish the actual release or to allow the Bureau of Prisons to re-compute the prisoner's release date in cases where the commutation is something other than time served. After any Presidential decision, either to grant or deny commutation, my office notifies the U.S. attorney, and the sentencing judge, if he has been asked to comment, of the nature of the President's decision.

I know, Mr. Chairman, my time has about elapsed, but let me say that in my prepared statement I have included, to the extent I can do so, consistent with the President's assertion of privilege, a discussion of some matters concerning the recent grant of clemency in the Puerto Rican cases that the media has indicated are of concern to the committee.

That concludes my statement, Mr. Chairman. I would be pleased to answer any questions.

[The prepared statement of Mr. Adams follows:]

Prepared Statement of Roger Adams

Good morning Mr. Chairman and Members of the Committee. My name is Roger Adams and I am the Pardon Attorney at the Department of Justice. The Office that I head has the mission of assisting the President in exercising his powers in executive clemency matters. My small staff and I do this largely through written memoranda signed by the Deputy Attorney General and sent to the White House.

I understand one of the things in which the Committee is interested

is how a request for a commutation of sentence is processed by my office. I will briefly outline the procedures and, to the extent I can, will describe what we did with respect to the cases of the 16 Puerto Rican persons to whom the President offered clemency on August 11, 1999. As you know, however, much of that information is covered by the President's assertion of privilege. Consequently, I cannot discuss it.

A few weeks ago, I met with a number of Committee staff to go over the procedure the Department follows in handling a commutation case--the type of case in which the President recently granted clemency. Let me now describe the way that process works:

First, a federal inmate files a petition for commutation of his sentence with the Office of the Pardon Attorney. He is eligible to apply as long as he has actually reported to prison and begun serving his sentence, and is not challenging his conviction or sentence through appeal or collateral attack. The petition form requires the inmate or his attorney--if he is represented by counsel--to state such information as the institution in which he is being held, the offenses of which he has been convicted, and the circumstances leading to his conviction. The petitioner is free to append to the application, or to submit at a later date, any additional documentation he believes will support his request.

When my office receives a petition, we review it to ensure the applicant is eligible to apply and begin an investigation. The first step is to contact the warden at the federal prison where the inmate is being held and request copies of the judgment of conviction, the presentence report, and his most recent prison progress report. The judgment of conviction gives us the official record of the offense or offenses of which the person was convicted. The presentence report, prepared by the U.S. Probation Office prior to sentencing, gives a good, contemporaneous account of the crime, and a description of the rest of the defendant's criminal history. The progress report, prepared periodically by the Bureau of Prisons (BOP), details such things as the prisoner's adjustment to incarceration, his progress on paying fines or restitution, and disciplinary history while in prison. At this stage of our investigation, we also check legal databases for reported court opinions concerning the petitioner's conviction and other crimes for which he has been convicted. In the large majority of cases, this information is sufficient to enable my office to prepare a brief report--500 to 700 words, usually--to the White House. These reports are sent to the Deputy Attorney General's Office, reviewed by his staff and transmitted under the Deputy Attorney General's signature to the Office of the White House Counsel. The vast majority of petitions are denied.

In a minority of cases, when my office's initial review of the information raises questions of material fact, or suggests that the application for commutation may have some merit, or if the case presents significant issues or is likely to attract wide attention, my office contacts the United States Attorney whose office prosecuted the case. We would also contact the prosecuting division of the Justice Department--usually the Criminal Division or Civil Rights Division--if one of these divisions was significantly involved in the prosecution. When we go to the United States Attorney or another component of the Department, we request comments and recommendations on the commutation request, and we may ask for additional factual information concerning the case. When we contact the United States Attorney, we send along a copy of the provision in the U.S. Attorney's Manual concerning the role of the U.S. Attorney in clemency matters. One of the things the United States Attorney can provide, and which is expressly mentioned in the Manual, is information concerning victim impact of the prisoner's crime, in appropriate cases.

In cases in which we solicit the views of the United States Attorney, we also contact the sentencing judge, either directly or through the United States Attorney, for his or her comments and recommendations on the clemency request, if the judge is willing to share them. While we are doing this, my office receives and maintains

for consideration in the petitioner's file correspondence sent by the petitioner and third parties--including Members of Congress--either to the Department or the White House regarding the commutation application. If representatives of the prisoner, either his attorney or a family member, seek a meeting and are willing to travel to meet in my office, we will meet with them and listen to whatever additional information they care to provide on the prisoner's behalf.

After we have gathered the information I have described, my office drafts a report and recommendation as to the merits of the commutation request. The report is actually a memorandum for the Deputy Attorney General's signature. The report is sent to the Deputy Attorney General's Office where it is typically reviewed by a member of his staff and is signed by the Deputy. Of course, the Deputy Attorney General is free to make changes in the report, but once it meets with his approval, he signs it and it is transmitted to the White House Counsel's Office.

Thereafter, when he deems it appropriate, the President acts on the commutation petition and either grants it or denies it, as he sees fit. Once the President acts on the petition, my office is notified, and we notify the petitioner or his attorney, if he was represented by counsel. We also prepare a warrant of commutation if necessary. Once the warrant is signed, we would transmit it, or a copy, to the Bureau of Prisons to accomplish the actual release, or to allow BOP to recompute the prisoner's release date in cases where the commutation is to something other than time served. After any Presidential decision, either to grant or deny commutation, my office notifies the United States Attorney, and the sentencing judge, if he has been asked to comment, of the nature of the President's decision.

Let me now turn briefly to some matters concerning the Puerto Rican cases that I can discuss. One matter that the media has mentioned as of interest to you, Mr. Chairman, is how the petition for these persons was filed. The prisoners did not sign and submit individual petitions. Rather, by letter to the Pardon Attorney dated November 9, 1993, the attorneys for these persons wrote to make application on their behalf. The 13 page letter and its numerous supporting documents have been given to the Committee. They are identified by Bates Stamp Numbers 000259-000421. This material contained the crucial information required on the standard application for commutation of sentence, such as a description of the offenses, the prisons in which the applicants were incarcerated, and the asserted reasons for clemency. My predecessor as Pardon Attorney decided to accept these documents as the petition. Let me underscore, Mr. Chairman, that my predecessor did this with the full knowledge of, and support of, the Deputy Attorney General's Office. I was then in the Deputy Attorney General's Office and one of my areas of responsibility was the Office of the Pardon Attorney. So, the Pardon Attorney discussed this with me, and I, in turn, discussed it with then Deputy Attorney General Phil Heymann.

While this procedure differs from the usual procedure in commutation cases, to accept a request from the legal representatives of these persons was neither unreasonable, nor unprecedented. There have been other occasions when the Department accepted applications signed by an attorney for the prisoner rather than the applicant himself. In this case, the Office of the Pardon Attorney knew that the issue of commutations of the sentences of these Puerto Rican prisoners was one that would likely be raised with the President. At some point, the White House would likely want input and advice from the Department of Justice. The best way for the Department to become prepared to present a thorough report and provide sound advice was to open cases for these persons and begin the comprehensive investigative process I have described.

Just as the Department expected, the White House did indeed want a report, and in the Fall of 1996, asked for it. Accordingly, on December 16, 1996, the Department submitted its written report and recommendation. I know there has been considerable discussion in the media about whether the Department made a recommendation in these

cases. The answer is we did, in December 1996. Although the President's assertion of executive privilege prevents me from saying what that recommendation was, or discussing what was in the report, there was a recommendation, as provided for in Section 1.6(b) of the Department's Clemency Rules.

Permit me, Mr. Chairman, to talk about the clemency rules, and a concern of some, at least as reported in the media, that the Department violated the rules by not making a recommendation in these cases. The fact of the matter, of course, is that the Department did make a recommendation. But even if we had not made a recommendation in 1996 and, instead, the President acted in a case in which the Department had not made a recommendation, that would not have violated the rule, and it would not have invalidated the President's action. The power to grant clemency, as you know, is vested solely in the President. Historically, Presidents have called upon the Justice Department to assist them with the exercise of the clemency power. The Clemency Rules, which the President approves, set forth a description of how the Justice Department is to perform its tasks on the President's behalf. The Clemency Rules exist to facilitate his consideration of clemency cases and, by their very terms, are advisory only. If the President, believed that some different procedure would better facilitate his consideration of a particular case or group of cases, he could certainly ask the Department to follow a different rule or procedure for those cases, and we in the Department would have a responsibility to do so. As a matter of fact, twice in fairly recent history, Presidents have acted in clemency cases with no input at all from the Department of Justice (or at least not from the Office of the Pardon Attorney)--no recommendation, no report, and even no knowledge. I refer to President Ford's pardon of former President Nixon in 1974 for crimes that he may have committed but for which he had not even been indicted, and to President Bush's pardons in December 1992 of the so-called ``Iran Contra'' figures for crimes for which they had been indicted, but not tried.

Finally, Mr. Chairman, I'd like to address another issue that the media has indicated is of concern to you: the opinions of the FBI and the Bureau of Prisons. The President's assertion of executive privilege precludes me from explaining what information the Department provided the White House. The President has indicated, however, in a recent letter that he was aware of the FBI's views. With respect to the Bureau of Prisons, that part of the Department does not take positions on clemency matters, at least in the vast majority of cases. BOP considers itself the ``keeper of the keys'' of the federal prison system and its most senior officials have made it clear that they do not want to be in the position of recommending which of the inmates they are supposed to be keeping in custody are to be released early. That is not to say that in an appropriate case I would not ask BOP for an opinion, but it would typically be in a case where clemency might be considered on the grounds that the inmate had done something extraordinary while in prison--for example saving the life of a BOP employee during a riot. But in the vast majority of cases, there is no need for BOP's input, beyond its furnishing of the inmate's prison progress reports which detail such matters as disciplinary incidents and escape attempts, all of which are invariably reflected in any report my office prepares for the Deputy Attorney General to send to the White House. So, while there have indeed been statements in the media indicating that BOP opposed these grants of clemency, and that may well be the personal view of various BOP employees, in accordance with its preference for not making recommendations in commutation cases, BOP's leadership never informed my office of its views.

I hope the foregoing has given the Committee some understanding of the work of the Office of the Pardon Attorney, and to the extent possible, what my Office did in the Puerto Rican cases. That concludes my statement, Mr. Chairman, and, so far as I may do so consistent with the President's assertion of executive privilege, I would be pleased to try to answer questions.

The Chairman. Thank you. We will put both your full statements in the record.

Let me turn to the ranking member for any statement he would care to make at this point.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE
STATE OF VERMONT

Senator Leahy. Thank you very much, Mr. Chairman, and, General Holder and Mr. Adams, thank you for your statements.

As the committee knows, I did not agree with the President's recent clemency decision, but I do recognize that it is his decision to make, as it is always the decision of any President to grant clemency. When I was State's attorney for Chittenden County in Vermont, I didn't always agree with the Governor of Vermont when he or she used the clemency power. But I understood that it was theirs to exercise as they saw fit, even if it was on cases I had prosecuted.

There were numerous exercises of this constitutional power by the Republican and Democratic Presidents with whom I have served in the past 25 years. President Carter used his power more than 560 times, President Reagan more than 400 times, President Bush more than 75 times. And they have not always been instances with which I have agreed with any of those Presidents.

Now, this is the committee's second hearing on the President's decision to offer clemency to 16 defendants who had served time or were serving time for crimes they committed regarding Puerto Rican independence, and I am sure that we will hear some rhetoric, as we have already, about how the grants of clemency to these defendants suggest the administration is soft on crime and has coddled terrorists.

Well, one can disagree, as I do, with the exercise of clemency, but still reject that kind of hyperbole. The President has granted a significantly lower percentage of clemency requests than any of his predecessors. The calculations I have is that President Clinton has granted 2.7 percent of the requests he has acted upon; President Bush granted 4.2 percent; President Reagan granted 12.6 percent; President Carter, 21.6 percent; President Ford, 31.2 percent; and President Nixon, 26.2 percent.

Earlier this week the FBI released its 1998 crime statistics report, some very good news. Serious violent and property crimes have dropped for the seventh year in a row. I have not seen that certainly in my adult life when anything comparable has happened. It shows the lowest national crime rate since 1985. The violent crime rate alone is 21 percent lower than the 1994 rate, 15 percent lower than the 1989 rate. I mention this because the administration can take credit for doing a lot of things to bring down our violent crime rate. The kind of trends that had been going up in our communities and plagued our States and our communities for decades have been reversed.

We are having our second hearing. A number of hearings have been held on this, and that is legitimate. But I would also hope that we would go on and get some of our other work done before we go out this year.

We saw the original S.J. Res. 33, the Lott-Coverdell resolution, condemning the clemency decision. The original one was flawed with the language, and I have cautioned a lot of people before, especially if it is the Senate or the Congress, when we start bandying about declarations that accuse the U.S. Government of making deplorable concessions to terrorists or undermining national security or emboldening domestic and

international terrorists, to be careful what they say. Extreme sports might be fine in the recreational field, but their political equivalent has no responsible place in the halls of government. If you strap on a political bungee cord to play reckless games like this, accusing the President of undermining national security or emboldening terrorists, I think it carries a very significant risk and we may end up getting what we wish for, and none of us would want that. It is irresponsible. It is wrong. And I am glad that cooler minds prevailed and the over-reaching and inflammatory rhetoric was removed and that we had a resolution that could pass unanimously.

I would like to see us working, if we are going to be doing things in the House and the Senate, for example--I mean, the House passed their resolution, we passed ours, and then we kind of ignored them after that, didn't try to work out the difference in language. If we are going to work out differences in language, let's work out the Hatch-Leahy juvenile justice bill that passed the Senate in May almost 3 to 1, and the House also passed a juvenile justice bill. We ought to be working out the differences between those.

We held one meeting of the conference. I believe that was in August, the first part of August--August 5, in fact. We wanted to finish this up before children went to school. Well, it has been more than 2 months that they have been in school, 6 months since the Columbine High School tragedy. We ought to get on to that. We ought to get on to some of these long-delayed nominations.

Now, I will note an area in which I am troubled. I am troubled by the fact that victims of the criminal activity engaged in by the FALN and by the 16 prisoners offered clemency apparently were not consulted during the pendency of the clemency petition. And I think that is wrong. I think victims should be consulted.

When I was privileged to serve as a prosecutor, I had the good fortune to work alongside a number of extremely dedicated State and local police officers, and these are public servants that literally put their lives on the line every day to protect the rest of us. Their responsibilities require split-second judgment and dedication and timing, a lot of guts.

Now, members of law enforcement and their families also suffered as victims of these bombings attributed to the FALN, to make the matters even more difficult. I think victims should be consulted in such things. They should at least be heard.

I wrote to the Attorney General last month. I asked her whether the views of any victims of FALN violence were considered with respect to the clemency offers and whether there are procedures and policies in place to ensure that the rights of crime victims are respected in the clemency process. And Department officials assured me that the impact of a crime on a victim is important in considering a petition for executive clemency, but they acknowledged, ``The Department's clemency regulations do not presently require victim notification before a clemency recommendation is made.''

Well, we all have to appreciate that even if the Department's clemency regulations were perfected to require victim notification, this President and any other President would remain free to grant clemency outside the regular process, as President Ford did when he pardoned President Nixon by proclamation and President Bush did when he pardoned six persons in the Iran-Contra matter by proclamation. But I still feel victims ought to be allowed to be heard during the process. We should examine the legal requirements in current law about notifying victims of crimes of changes in the status of offenders due to clemency petitions. The Victims' Rights and Restitution Act of 1990, 42 U.S.C. 10607(b)(5) and (8),

requires a responsible official to provide the victim with the earliest possible notice of any other form of release from custody of the offender and general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each. Executive clemency is not noticed in that statute as triggering a duty to notify a victim.

Mr. Chairman, I would like to work with you and with the Department of Justice on this. I think we ought to find some way that we may be able to alert victims of the pendency of clemency petitions.

Again, I understand any President, just as a Governor in a State, has a right to grant clemency. I may well disagree with that exercise, as I do here. But I cannot help but think in most of these clemency matters that if victims were heard, too, it would help. And whoever the President is, just as with Governors, whoever the Governor might be, they would have a better idea of what is involved. I don't think there should be--just as I don't think there should be sentencing hearings without hearing from the victims, I don't think there should be clemency hearings without hearing from them.

I will put my whole statement in the record, Mr. Chairman.
[The prepared statement of Senator Leahy follows:]

Prepared Statement of Senator Patrick J. Leahy

I did not agree with the President's recent clemency decision, but I recognize that it is his decision to make. When I was State's Attorney for Chittenden County, I did not always agree when the Governor of Vermont used his clemency power, but I understood that it was his to exercise as he saw fit. There were numerous exercises of this constitutional power by the Republican and Democratic presidents with whom I have served over the last 25 years: President Carter used this power more than 560 times, President Reagan more than 400 times and President Bush more than 75 times--and they have not always been instances with which I necessarily agreed.

This is the Committee's second hearing on the President's decision to offer clemency to 16 defendants who had served or were serving time for crimes they committed purportedly for the cause of Puerto Rican independence. I am sure we will hear repeated today strong rhetoric about how the grants of clemency to these defendants suggests that this administration is soft on crime and has coddled terrorists. One can disagree with the President's clemency decision and still reject such hyperbole.

This president has granted a significantly lower percentage of clemency requests than any of his predecessors. In fact, by my calculations, President Clinton has granted only 2.7 percent of the requests he has acted upon, while President Bush granted 4.2 percent, President Reagan granted 12.6 percent, President Carter granted 21.6 percent, President Ford granted 31.2 percent, and President Nixon granted 26.2 percent.

Moreover, earlier this week, the FBI released its 1998 crime statistics report and it is full of good news. Serious violent and property crimes have dropped for the seventh year in a row, showing the lowest national violent crime rate since 1985. The violent crime rate alone is 21 percent lower than the 1994 rate and 15 percent lower than the 1989 rate. These cold, hard facts speak for themselves: This Administration is doing many things right to bring our violent crime rate down. Upward trends in violent crime that have plagued our communities and our citizens for decades have been reversed.

This Committee is holding its second hearing on this matter, following hearings on September 14, 1999, by a subcommittee of the Foreign Relations Committee and on September 21, 1999, by a subcommittee of the Appropriations Committee. Similarly, the House Committee on Government Reform has held a hearing on this matter. All

are free to comment on the President's clemency decisions--and to disagree with those decisions, as I do--but the Congress also needs to focus on getting its own work done.

While the Republican leadership is hard-pressed to find the time to deal with a lengthening list of critical legislative issues, the Congress has spent precious time and energy on the clemency decision, even though we have no power to change, modify or overrule that decision. The House of Representatives and the Senate devoted much time in September to separate resolutions condemning the President's clemency decision.

The original version of S.J. Res. 33, the Lott-Coverdell resolution condemning the clemency decision, was blemished by extreme and dangerous political rhetoric that was ultimately eliminated from the final substitute, which was then adopted virtually unanimously by the Senate. I have cautioned before that we ought to be careful when anyone, let alone the Senate and Congress of the United States, starts bandying about declarations that accuse the United States Government of making ``deplorable concessions to terrorists,'' of ``undermining national security'' or of ``emboldening domestic and international terrorists.'' Extreme sports may have a place in the world of recreation, but their political equivalent has no responsible place in the halls of government. Strapping on political bungee cords to play reckless games like this, accusing the President of ``undermining our national security'' or ``emboldening terrorists,'' carries significant risks and was irresponsible and wrong. I am glad that cooler minds prevailed in the Senate and over-reaching, inflammatory rhetoric was eliminated from the text of the resolution the Senate passed on September 14.

The House passed a different resolution, but regular legislative practice has been ignored since no effort has been made by the leadership to take any steps to resolve the differences in the House and Senate resolutions. Once the political points are scored, this Congress apparently leaves the substantive expression of congressional disapproval as unfinished business--the shells of spent political bullets.

The American people can judge whether the time and energy being devoted by the Congress to criticizing the President's decision in hearings and in debates on resolutions is the best use of the our legislative resources. I challenge the Senate to make time for votes on the important legislative matters and many qualified nominees whom the Republican majority has stalled for the last several years. Because the Senate failed to complete work on all the appropriations bills that must be passed before October 1, our government is currently operating under a temporary continuing resolution. The Republican Congress cannot find time to finish work on campaign finance reform or a real patients' bill of rights or a raise to the minimum wage or Medicare reforms.

Moreover, we should be working hard on resolving differences between the Hatch-Leahy juvenile justice bill that passed the Senate in May, and the House-passed juvenile justice bill. We have held only one meeting of the conference, on August 5, and we did not get our work done even though children have now been in school for more than two months and six months have passed since the tragedy at Columbine High School.

Long-delayed nominees continue to languish on the Senate calendar, including Judge Richard Paez--whose nomination to serve on the Ninth Circuit Court of Appeals has been pending for more than three-and-one-half years--and the nominations of Marsha Berzon to be a judge on the Ninth Circuit, Bill Lann Lee to head the Civil Rights Division, and scores of other nominees pending before the Senate. These are weighty legislative responsibilities on which we should be focusing our attention.

On a final note, I remain troubled by the fact that victims of the criminal activity engaged in by the FALN and by the 16 prisoners offered clemency apparently were not consulted during the pendency of the clemency petitions. When I was privileged to serve as Chittenden

County's prosecutor, I had the good fortune to work alongside a number of dedicated State and local officers. These public servants literally put their lives on the line each day to protect all of us. Their responsibilities require split-second judgment, dedication, timing, and guts. That members of law enforcement and their families also suffered as victims of bombings attributed to the FALN makes these matters even more difficult.

I wrote to the Attorney General last month and asked her whether the views of any victims of FALN violence were considered with respect to the clemency offers, and whether there are procedures and policies in place to ensure that the rights of crime victims are respected in the clemency process. Department officials assured me that the impact of a crime on a victim is important in considering a petition for executive clemency, but they acknowledged that the ``Department's clemency regulations do not presently require victim notification before a clemency recommendation is made.''

We all must appreciate that even if the Department's clemency regulations were perfected to require victim notification, this president and any other president would remain free to grant clemency outside the regular process, as President Ford did when he pardoned President Nixon by proclamation and President Bush did when he pardoned six persons in the Iran-Contra matter by proclamation.

We should examine the legal requirements in current law on notifying victims of crime of changes in the status of offenders due to clemency petitions. The Victims' Rights and Restitution Act of 1990, 42 U.S.C. Sec. 10607(b)(5) & (8), requires a ``responsible official'' to provide the victim with ``the earliest possible notice of * * * any other form of release from custody of the offender'' and ``general information regarding the corrections process, including information about work release, furlough, probation and eligibility for each.''. Executive clemency decisions are not specified in the statute as triggering a duty to notify a victim.

I would like to work with the Chairman and the Department of Justice on constructive steps we may be able to take to alert victims of the pendency of clemency petitions. Achieving this would ensure that this hearing is not just a political exercise but a substantive one as well.

The Chairman. Thank you, Senator Leahy.

In your opening statements, you apparently extend sympathy to the victims and their families, yet neither you nor anybody else, to my knowledge, involved in the clemency review process saw fit to seek the input of those people, the victims themselves, in determining whether or not clemency was justified.

Would you agree with the victims, then, that it was a mistake not to involve the victims and their families in the clemency review process?

Mr. Holder. Well, I think that generally we do a good job in getting victim input, notifying victims when pardons and clemency decisions are being made. I think we could have done a better job here. I think we could do a better job generally.

The Chairman. You didn't do anything here. You didn't do anything here, according to the records I have.

Mr. Holder. Well, we---

The Chairman. You didn't even talk to the victims.

Mr. Holder. What we generally do is we seek to interact with the victims through the U.S. attorneys.

The Chairman. But I am not talking about generally. I am talking about what you did in this case. You didn't even talk to them. You didn't even go to the victims. You didn't ask them for their advice. You didn't give them any input at all. They are up in arms about this, and I don't blame them. And I don't think my Democrat colleague blames them, either.

Mr. Adams. Mr. Chairman, could I offer an observation?

The Chairman. Sure.

Mr. Adams. There was discussion between the Office of the Pardon Attorney and the U.S. Attorney's Office in Chicago about contacting victims. I think, too, when we are----

The Chairman. What took place in that discussion?

Mr. Adams. I am not at liberty to discuss----

The Chairman. You can't tell us whether or not you--you asked the U.S. attorney whether you could talk to victims or you didn't ask him?

Mr. Adams. The U.S. attorney contacted the Office of the Pardon Attorney and asked--and discussed about talking with victims.

The Chairman. They asked you to talk to victims, right?

Mr. Adams. He indicated that he would like to talk to victims. That is right.

The Chairman. Well, what did you say?

Mr. Adams. I said it was fine, he could go ahead and talk to them.

The Chairman. Did he?

Mr. Adams. That is covered by the President's assertion of privilege.

The Chairman. Did he ask you to talk to victims, the U.S. attorney? Did anybody ask you to talk to victims? Did anybody in your office talk to victims?

Mr. Adams. My office is a very small office, Senator.

The Chairman. Fine.

Mr. Adams. We rely on U.S. attorneys to provide us the views of victims.

The Chairman. And you told the U.S. attorney to go ahead and talk to victims?

Mr. Adams. Yes.

The Chairman. And that very same U.S. attorney said that he recommended against clemency after doing so, I guess. Is that right? Right or wrong?

Mr. Adams. The President has acknowledged that the U.S. attorneys opposed clemency, yes.

The Chairman. The President had knowledge that the U.S. attorney opposed clemency.

Mr. Adams. He has acknowledged that they opposed----

The Chairman. So if anybody talked to victims, it was that U.S. attorney, and he recommended against clemency, right?

Mr. Adams. The President has acknowledged that he did, yes.

The Chairman. Well, another generally recognized criterion for granting clemency is to reward the prisoner for cooperation with law enforcement agencies by giving information related to other investigations. Now, there are several investigations that could possibly benefit from information known to a number of these FALN prisoners, not the least of which is the Fraunces Tavern bombing in New York City which killed four people and maimed several others, a number of police people at that.

Another example is the whereabouts of several fugitives, including one current member of the FBI's 10 Most Wanted List.

Now, Mr. Holder or Mr. Adams, or both, did anyone from the Department of Justice seek any information from the FALN prisoners concerning these or any other ongoing investigations before these releases? If so, tell us about it. If not, why didn't they?

Mr. Holder. Well, as you indicate, Mr. Chairman, there are a variety of reasons for which clemency, commutation of sentences should be considered or can be considered by the President. This is an exclusive power of the President.

The Chairman. No, I acknowledge all that. There are a variety of reasons. My question goes beyond that. That is, did you try to obtain information before you granted clemency concerning these fugitives and these other matters that will

help us to put some of these problems to bed with the FALN?

Mr. Holder. To my knowledge, those kinds of requests were not made to these prisoners.

The Chairman. In other words, nobody even talked to these fellows or these FALN prisoners about fugitives like Gerena and others who are still at large? Nobody asked them if they had any information, nobody asked them to cooperate, nobody asked them to help enlighten us in these areas?

Mr. Holder. As I indicated, I don't think that happened. But as I also indicated, the President's power to commute sentences can take into account a variety of things.

The Chairman. He doesn't have to consider that. The question--the problem that I am having is that he should have considered it, and law enforcement people, one of the first things, it seems to me, law enforcement people ought to be interested in, and certainly the Department of Justice, ought to be trying to get to the bottom of fugitives who were part of this seditious conspiracy that these people were convicted of. And you are saying nobody even asked a question about that.

Mr. Holder. Well, I mean, I think, I think, you know, being realistic here, these are people who----

The Chairman. I am being realistic, Mr. Holder.

Mr. Holder. Well, I am----

The Chairman. You are a former prosecutor. I mean, don't you want to get to the bottom of these things?

Mr. Holder. Sure.

The Chairman. Well, then why weren't the questions asked?

Mr. Holder. Because it seems to me you are talking about a group of people who did not recognize in the first instance the right of the American Government to even----

The Chairman. What has that got to do with it? The point is----

Mr. Holder. I am saying, Mr. Chairman----

The Chairman [continuing]. If they are going to be given clemency, why don't we ask them to help us to get other people who are fugitives? At least they should be asked. I doubt that they were going to cooperate. But then, again, that might have some bearing on whether or not clemency should have been extended.

Mr. Holder. As I said, the power of the President is absolute in these areas and can take into consideration a variety of things. The President has indicated that on the basis of what he terms ``equity and fairness,' ' he thought that the extension of the commutation here was appropriate, understanding that there were people who would disagree with his decision.

The Chairman. Well, this FALN member, Gerena, is on the FBI's 10 Most Wanted fugitive list--the 10 Most Wanted List, let alone fugitive. Doesn't it seem logical to you that before you give clemency to people like this who have been convicted of seditious conspiracy and of all these other matters involving terrorism, that the least law enforcement people should do is ask them to cooperate in finding one of the 10 most wanted people on the FBI's list?

Mr. Holder. Well, again, it is for the President to decide----

The Chairman. No, it isn't. It is for the Justice Department to make this determination whether they ask these people these things.

Mr. Holder. Well, no, that is not--I respectfully disagree. It is for the President to decide exactly what he is or is not going to consider in making that determination.

The Chairman. You are saying the President just didn't ask you to do that, you didn't think of doing it, or you decided not to do it, even though you had every right to do that, to

ask for cooperation by these FALN members in finding Gerena, to just give one illustration, who is on the FBI's 10 Most Wanted List.

Mr. Holder. I mean, there are a variety of things that can be done in any pardon decision, in any commutation decision. Again, I come back to the fact, however, that it is up to the President to decide those things that are relevant in his decisionmaking process.

The Chairman. But, Mr. Holder, wouldn't it have helped the President for you to say that you can condition clemency--we recommend you condition clemency on cooperation by these people in helping us to find one of the 10 Most Wanted criminals in the United States on the FBI's list, and others as well? But I just center on Gerena because that is so noticeable. Isn't that the Justice Department's job to help the President to make these decisions?

Mr. Holder. That is generally not the way the process works. I mean, we don't suggest to the President things that he ought to consider in making the pardon or commutation decisions.

The Chairman. Well, let me ask it a different way. Don't you think it would have been important for you and members of the Justice Department, whoever they may have been, whether Mr. Adams or whoever was in the Pardon Office, to have said to the President, before you grant clemency, let's at least try to get some of these criminals located, let's at least try to get to the bottom of some of this criminal activity, let's at least ask some questions of these people, let's condition clemency on whether or not they cooperate with us or whether or not we believe they are telling the truth?

Don't you think that would have been a wise thing to do?

Mr. Holder. I don't know. I mean, the President exercised his power here and made these pardons conditional on the renunciation of violence. He put into the conditional aspects of the commutations those things that he considered appropriate. And it is not my position, it seems to me, to disagree with that.

The Chairman. Well, as Senator Leahy said, while we cannot change the decision, hopefully we can help reform the process. You know, I would like to give the Department a greater voice, especially to victims, give victims a greater voice in this process than we have seen in this particular instance and do more to get clemency applicants--and none of these people applied for clemency. That is right, isn't it? They didn't apply for clemency.

Mr. Holder. Well, clemency petitions were filed on their behalf by their attorney.

The Chairman. OK. But don't you think we should get the Justice Department to do more to get the applicants for clemency to cooperate and provide information on open cases like fugitives? Don't you think that would be just a good process for the law enforcement people in this country? If Gerena is a dangerous criminal and he is listed as one of the 10 most wanted criminals in the United States by the FBI, don't you think it is incumbent upon law enforcement people, before they grant clemency, to get to the bottom of whatever they can with those to whom they are going to give this tremendous honor?

Mr. Holder. The Constitution defines exactly what the President has got to do in terms of the exercise of that authority. And it is pretty unlimited. There are a variety of things, I think, that we could talk about as to what a President should hypothetically do. The Constitution, however, is pretty clear that the President's authority in this regard is, as I said, pretty unrestricted. And any President can take

into consideration a whole variety of factors in making those kinds of decisions.

The Chairman. I don't want to beat this to death, Mr. Holder, but you seem to be blaming the President for making this decision.

Mr. Holder. No, I am not blaming the President at all. Not at all. No, I am not doing that. Please do not take my remarks that way.

The Chairman. Well, I am blaming him. But I am also blaming you for not doing the minimum that any law--not necessarily you, but the Justice Department for not doing the very minimum that seems to me law enforcement would demand, and that is, ask questions of these people before you let them out of jail. These people are considered by their conviction terrorists. And there are people at large whom they might have helped to locate for us so that we could knock one more off the 10 Most Wanted List of the FBI.

When I met the Attorney General a few weeks ago, she told me that the Department made a recommendation to the White House concerning clemency in December 1996. You are aware of that.

Mr. Holder. Yes.

The Chairman. More recently, the Department produced to the committee a letter from the then Pardon Attorney Margaret Love which indicates that her recommendation, the recommendation of the Pardon Attorney at that time, was to deny clemency. That is right, isn't it?

Mr. Holder. The letter--I am not exactly sure how the letter was produced. Letters should not have been produced. It seems to me that the information contained in that letter is clearly within the bounds of executive privilege.

The Chairman. Seriously?

Mr. Holder. Excuse me?

The Chairman. Seriously? You really believe that?

Mr. Holder. Oh, absolutely.

The Chairman. Well, we have a copy of the letter, and you are aware that she recommended against clemency.

Mr. Holder. I really would not comment on what recommendations were made by the Pardon Attorney. As I said, I think that falls well within the bounds of executive privilege.

The Chairman. Well, let me take a second here. I don't mean to beat this to death.

[Pause.]

Senator Sessions. Do you have it there? Mr. Chairman, I have it if you don't.

The Chairman. Why don't you read it?

Senator Sessions. July 25, 1997, from Margaret Love, Pardon Attorney, to Mr. Ruff. She said, ``On December 16, 1996, a report recommending denial of clemency for 17 Puerto Rican prisoners was forwarded to you.''

The Chairman. That is what the letter says. It is stamped July 25, 1997, by the Justice Department, but it was dated--well, it isn't dated. It just said, ``Dear Mr. Ruff: On December 16, 1996, a report recommending denial of clemency for 17 Puerto Rican prisoners was forwarded to you.''

It even goes further. It says, ``Since that time, the Department of Justice received a letter from former President Jimmy Carter supporting commutation of sentence for these prisoners. As you know, President Carter granted commutation of sentence to a number of Puerto Rican Nationalists during his term of office. We thought you might wish to consider his letter in connection with your deliberations on this matter, and are therefore enclosing a copy of it.''

In other words, they even gave the letter of President Carter, former President Carter, but did not change the opinion. You are aware of that letter?

Mr. Holder. Well, as I said, with regard to--we have indicated that, in fact, a recommendation was made in December 1996. We have never said and I don't think it is appropriate for us to indicate what--even though this letter does now exist, to say what the recommendation was from the Pardon Attorney.

The Chairman. I didn't realize there was a vote on. Perhaps I wouldn't have taken so long. Let me turn to you, Senator Leahy. I have some more questions, but I will ask them later.

Senator Leahy. Mr. Chairman, one, I agree with Mr. Holder that this would be a matter of executive privilege, and let me say this: I have made some recommendations of making sure that victims can be heard in clemency procedures. I have an enormous amount of respect for the office and how it is handled on clemency matters. Mr. Adams is a distinguished professional who served here in various administrations and is certainly of a non-political background and works as a professional, and I think any administration, Republican or Democrat, should be happy to have him. And, Mr. Holder, you know of my high regard for you.

Even if we----

The Chairman. Could I interrupt you for one second? I am going to go vote. Senator Leahy will finish, and if he wants more time, we will give him more. Then Senator Grassley has already voted, so we will turn to him next, and he will continue.

Senator Leahy. I think no matter what you say, though, on all these procedures, the fact is a President doesn't have to pay any attention to them. Is that correct?

Mr. Holder. That is correct, Senator. As I said, the Constitution defines what the power of the President is.

Senator Leahy. And I say this because we have had--on this committee alone, we have presently or in the past six different members who have run for the Presidency, two currently running for the Presidency, four others who did run for the Presidency, of those who are serving right now. Since I have been here, this seems to be--you know, they talk about babe magnets. I guess this is Presidential magnets. I have had about 10 different people I have served with on this committee that have run for the Presidency at one time or another. I will take a Sherman-esque position right now. I will never be one of those.

But the fact is, whoever is President--and I would say we should know this on this committee, especially. Whoever is President can ignore any recommendation and grant clemency. Certainly President Ford didn't have a clemency board on President Nixon's pardon. President Bush didn't on the Iran-Contra people. And, again, while I may disagree with the President's pardon, as I do in the FALN, no matter what procedures we put in, the bottom line is a President can ignore them. Is that correct?

Mr. Holder. That is correct.

Senator Leahy. And I have a number of questions. If I do not come back, I will submit them for the record. I am told we have about 12 seconds left on this vote. I would like to maintain a record of voting, so I am going to go. But as I have said before, I would hope whatever disagreements people may have with the President's decision, let's not take it out on either one of the two of you. You are both professionals who serve this Nation very well. I just wanted that on the record.

Thank you.

Senator Grassley. [Presiding.] Thank you. I have voted, so I will stay and ask some questions. I suppose either one could answer, but I would direct, first of all, to Mr. Holder.

The President offered conditional clemency to the Puerto Rican terrorists. If the terrorists are later found to be in

violation of any of these conditions, is it your view that clemency can be revoked? And if not, is there any mechanism for enforcing compliance with the conditions?

Mr. Holder. I think that there are--the executive branch does maintain or does have the power if the conditions were not met to essentially yank them off the street and throw them back in jail.

Senator Grassley. So then the normal process of arresting people who violate a policy would be the mechanism for doing that?

Mr. Holder. Yes, I mean, I meant--you know, I didn't mean to be flip there. Obviously there have to be procedural things that one would have to go through. They would be afforded due process.

Senator Grassley. Due process, yes.

Mr. Adams. Could I interject something, Senator Grassley?

Senator Grassley. Yes, you may do that. Go ahead.

Mr. Adams. The conditions that they have to follow or that they fulfill a condition, if they don't fulfill the conditions, any of the conditions of mandatory release or if they commit another crime, then the first thing that would happen would be their mandatory release--there would be a hearing for the purpose of revoking their mandatory release by the Parole Commission. That would provide a mechanism for their arrest and their incarceration.

Senator Grassley. OK.

Mr. Adams. What would happen then, assuming that the Parole Commission at a hearing found that there was reason to believe that they had committed another crime or had violated a condition of mandatory release, and that the violation was so serious that they should be reincarcerated, they would be reincarcerated for the remainder of their sentence as commuted by the President. But the commutation warrant specifically provides that if they violate any of the conditions, the conditions of mandatory release or if they commit another crime, that they can be reincarcerated for the entire length of their original sentences, which ranged in most cases from 35 to 90 years.

So the mechanism to do that is--that has rarely been done, and the mechanism to do that is imperfect, but there is the ability in place for the President--this President or a future President--to say I find that individual whose sentence was commuted has violated the conditions of the commutation and he is incarcerated for the entire length of the sentence as originally imposed.

Senator Grassley. Mr. Holder, have any of the conditions set by the President been changed or modified? Are there any plans to modify or delete any conditions?

Mr. Holder. No, Senator, not to my knowledge. The conditions have all been set out. They have been explained to the prisoners before they were released, and they would remain in effect.

Senator Grassley. At a prior hearing, I asked whether the victims thought it would be a good idea to require the President to consult with victims prior to granting clemency. Would you, Mr. Holder, support doing this? The President, of course, could still grant clemency to anyone, even terrorists, but he would be required to consult with the victims first.

Mr. Holder. I think that we do a pretty good job in consulting with victims, but I think that we can do a better job. And I think we ought to think about ways in which we can put mechanisms in place so that the Justice Department--and I say the Justice Department as opposed to the Office of the Pardon Attorney--makes contact with victims and makes that perhaps a part of our recommendation.

I wouldn't want to put it all on the Office of the Pardon Attorney. They have a rather small staff. And given the volume of cases that they work with, I would want to exactly think about what mechanism we might use to do a better job of getting in touch with victims.

Senator Grassley. I think this would be appropriate for you, Mr. Adams, as a follow-up on this, and it is also a point that Senator Hatch made earlier regarding the role of victims in the pardon process generally and in this case particularly. Both of you have indicated that victims are generally involved and that victims were somewhat involved in this case. But we got some information provided to us by you, Mr. Adams. You indicate that victims were not involved in this case, and generally speaking, it would cause a big change in the way things are evidently handled.

We have a communication from you August 23, 1999, to Mr. Jamie Orenstein that says along this line that, ``Any requirement, either a constitutional amendment that actually makes it to enactment or revision of our regulations that requires us to consult, even perfunctorily, with victims, will cause a big change in the way we operate. My preference would be to wait for a while and see how likely Congress is to actually pass a resolution or whatever is required to begin the process to amend the Constitution before we race forward and offer to adopt.'' So that signals to me maybe you have some question about the consulting of victims.

Mr. Adams. I think what it signifies to me, Senator Grassley, is the sort of parochial concern of my office, as the Deputy Attorney General just alluded to. We have a pretty small staff. I have six attorneys, counting myself. What I was referring to in that memo to Mr. Orenstein, who is a member of Mr. Holder's staff--they were considering the victims' rights amendment and the position the Department should take on that. I was merely expressing the view that if the procedures were changed to require my office to reach out to victims in any large number of cases that that would certainly--it would, as I think you just said, and I don't have the memo in front of me. I think you said that I said it would cause a change in the way we operate. It would certainly cause a change in the way my office operates. Now----

Senator Grassley. You both are saying you would need a lot more staff.

Mr. Adams. If the burden were to be put on the Office of the Pardon Attorney, yes, sir, we certainly would.

I think as Mr. Holder indicated, though, there may well be ways to do that without putting the burden on the Office of the Pardon Attorney.

Senator Grassley. I thank you for answering my questions, and I think, Senator Thurmond, Senator Hatch is over for a vote now, and if you are ready to ask questions, I think it would be appropriate to do that. Otherwise, we are going to have to have a momentary lull here.

Senator Thurmond. I have a statement first I would like to make.

Senator Grassley. And I am going to have to excuse myself to go to the Finance Committee, so you are in charge now.

Senator Thurmond. Make sure you come back. [Laughter.]

Senator Grassley. Mr. Hatch will be back in just a few minutes.

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator Thurmond. I am pleased that we are holding this hearing today regarding the President's decision to commute the

prison terms of members of the FALN, a militant group that has killed and maimed innocent civilians and police officers during its reign of terror.

The individuals granted clemency were active participants in many serious crimes such as weapons and bomb offenses and armed robbery as part of their overall terrorist activities. They attempted to wage war on our Nation. They were convicted of seditious conspiracy, which involves attempting to destroy by force the Government of the United States. Crimes such as this go to the heart of our Nation.

The purpose of this hearing is to permit us to get a better understanding of the clemency process and how it resulted in the release of these terrorists. Although the President has the absolute power to grant clemency, this committee has an important oversight role over the clemency process.

These commutations did not have the support of law enforcement. It appears that these criminals were not required to assist law enforcement in ongoing investigations of the FALN or other criminal activity. Indeed, such investigations are one reason the committee has been denied some information.

Contrary to what we have heard, it is clear that the sentences these terrorists received were not unduly severe, as can be seen from the Sentencing Guidelines. If these terrorists were sentenced today under the Guidelines, they probably would receive 30 years to life. Parole was an option for these defendants, making them eligible for release after serving one-third of their sentences or less. However, parole is not available today under these Guidelines. Today, 30 years means 30 years and life means life.

These criminals should have remained in prison. Although they eventually signed documents renouncing violence, their statements in recent years give no indication of a change of heart. They have never shown remorse or regret for their conduct, even to this day.

I am concerned that the release of the prisoners may only invigorate terrorism. Clearly, granting clemency here has sent the wrong message about America's commitment to fighting terrorism.

I welcome our witnesses here today to discuss this most serious matter.

I have a few questions here I would like to propound if there are no other statements to be made.

Mr. Holder and Mr. Adams, I understand that while the clemency petitions for the 16 FALN defendants were being considered, Federal law enforcement maintained open investigations regarding the FALN. Are the individuals who seek clemency normally required to cooperate with Federal law enforcement as a condition of clemency being considered, or were the FALN members here required to cooperate?

Mr. Holder. Well, as I was indicating earlier, the President's power is absolute in this area, and the President can do a variety of things or require a variety of things from anybody to whom he was thinking about giving a pardon or commuting a sentence. I would defer to Mr. Adams with regard to what the practice generally is.

Mr. Adams. Senator, there is no general requirement that a person seeking a commutation of sentence pledge to cooperate with law enforcement. As to what we did to investigate these cases, as to what information we provided to the White House, that is all privileged, and I really can't discuss it with you.

Senator Thurmond. Mr. Holder and Mr. Adams, Justice Department regulations indicate that the availability of other remedies such as parole is a factor in considering clemency. It appears that while some of the FALN members requested parole and were denied, others did not even apply. Why is the

availability of parole an appropriate consideration for clemency? And was the availability of parole considered in the Department's recommendations in these cases?

Mr. Adams. Senator Thurmond, the reason that the availability of parole is one factor that is considered is because going to the President and asking him to commute a sentence is extraordinary. It doesn't happen very often. It is certainly a factor that a President would want to consider, whether or not the person was eligible for parole.

As for whether or not we considered that in making our report to the President, that, too, I would have to respectfully submit, is covered by the President's assertion of privilege and I can't discuss it with you.

Senator Thurmond. Mr. Holder and Mr. Adams, as you know, the U.S. Attorney's Manual indicates that remorse is a factor that is considered in whether to grant clemency. It is my understanding that to this day the FALN members who were granted clemency have not expressed remorse or regret for their past criminal conduct.

Why is remorse or regret an appropriate factor to consider, or did your evaluation of the FALN members consider this issue?

Mr. Adams. I think, Senator, that the reason why remorse or regret is a factor is fairly obvious. It would be the type of thing that the President would like to know in deciding whether to exercise his very personal power of executive clemency.

Again, Senator, I can't tell you what we said with respect to remorse or regret in any of the communications we made to the White House because that is also covered by the President's assertion of privilege.

Senator Thurmond. Mr. Holder and Mr. Adams, I understand that a factor in considering clemency is undue disparity in sentencing. In this matter, it appears that under the Sentencing Guidelines, the 16 FALN members would have received 30 years to life. For a defendant that was sentenced prior to the Guidelines, do you normally consider what they would have received under the Guidelines? And did you consider what the FALN members would have received if they had been convicted under the Guidelines?

Mr. Holder. Well, maybe with regard to regular practice, I could let Mr. Adams handle that. We were handed, I guess, this letter at the beginning of the proceeding. It is a letter dated October 19, and I guess it is from somebody at the Sentencing Commission, I guess the interim staff director at the Sentencing Commission, and it indicates that a guideline range for these folks would range from 360 months to life.

With all due respect to the person who prepared this, it seems to me that, you know, there are a whole variety of things that a judge would have to consider after a contested hearing in deciding exactly where the Guidelines fell with regard to these folks. It may be that this determination by Mr. McGrath is, in fact, right. But I would say that what is contained in here should not be treated as absolutely correct.

There are a variety of things that, as I said, would have to be considered by a sentencing judge before a determination was made.

Mr. Adams. Yes, let me just amplify on that a little bit, Senator Thurmond. With respect to the regular process, as you know, there are very few or comparatively few old-law prisoners still in the Federal prison system. Most of the commutation petitions that we get in my office are from prisoners serving new-law sentences.

However, when we get a petition from prisoners serving an old-law sentence, the possible disparity between what the person would get under--what the person got under old law and what he might get under the Guidelines, that is something that

we might well consider.

Again, whether we considered it in this case, I have to respectfully state to you, Senator, is covered by the President's assertion of privilege, and I can't discuss it with you.

Senator Thurmond. Mr. Holder, as you know, the United States has had a strong policy of intolerance regarding terrorism for many years. Are you concerned that granting clemency to the FALN terrorists in this matter sends the wrong message about America's commitment against terrorism?

Mr. Holder. No, I am not, Senator. I think that the stand that this Government has consistently taken, under Republican and Democratic Presidents, is one that I think the world understands, that terrorists understand. I don't think that anything that has been done by this President in connection with this case has in any way weakened our resolve to fight terrorism, and beyond that, I think we have to keep in mind that although people might disagree about the decision, the people who were released did serve substantial amounts of time, between 16 and 19 years. Some might say they should have served longer, but the sentences were still substantial ones, and I think the message that we have sent to those who might consider harming our citizens, harming our facilities around the world, that that message is undiluted by the President's actions here.

Senator Thurmond. Thank you, Mr. Chairman.

The Chairman. Thank you, Senator Thurmond.

Senator would you let me just finish up what I was doing before I turn to you?

Senator Sessions. Please.

The Chairman. Because I would like to be able to do that. I feel badly I hadn't turned to the ranking member before then.

We understand from the published reports that in the summer of 1999 the Pardon Attorney sent a second report to the President that did not recommend either a grant or a denial of clemency, which, in essence--in other words, did not effectively reverse the 1996 recommendation by the then Pardon Attorney.

Now, Mr. Holder and Mr. Adams, you both drafted the 1999 report. Why was that second report prepared? Why did you prepare that? And then did the second report contain a recommendation of whether the President should or should not grant clemency?

Mr. Holder. Mr. Chairman, with respect to those questions, it seems to me that the answers to those questions are prohibited by the assertion of privilege that the---

The Chairman. How? Tell me. And then where in the law do you find that? Because, first of all, you don't--I can see where executive privilege can be raised with regard to Mr. Ruff, who was the personal counsel to the President, White House counsel, in giving his opinions. But you represent the people of this country. Now, why is that such a question that requires an assertion of privilege?

Mr. Holder. Well, executive privilege has been seen to cover substantially more than just the communications between the counsel to the President and the President. Communications between the Justice Department and---

The Chairman. I am not asking you to tell me everything you did. I am just asking you for a yes or no answer about whether or not there was recommendation made at that time. Was there?

Mr. Holder. As I said, I respectfully do not feel I can answer that question given the President's assertion.

The Chairman. So you are not willing to say that you made a recommendation of clemency or you didn't make a recommendation for clemency, or you just punted?

Mr. Holder. No, I am not punting. What we have said is

that, consistent with our regulations in December of 1996, we made a recommendation, and that there were subsequent communications with the White House after that recommendation. But given the assertion of executive privilege, we do not feel that we are at liberty to discuss the specifics of those communications.

The Chairman. So we can presume then that there was no recommendation for clemency?

Mr. Holder. No, I don't think you can presume that. As I say, I just cannot answer that question. And you would be presuming something on the basis of a non-answer.

The Chairman. Presume then that there was a recommendation not to grant clemency?

Mr. Holder. Well, again, Mr. Chairman, I don't think you should presume anything from my answer other than what I have said, which is that executive privilege----

The Chairman. Isn't it true that under Justice Department guidelines the Pardon Attorney is supposed to give a recommendation one way or the other in these matters, that that is a part of the guidelines of the Justice Department? Right?

Mr. Holder. That is correct, and we complied with that regulation in December 1996.

The Chairman. Now, in your opening remarks, you answered the question yes--or no for the 1996 report. Why not for the 1999 report? You admitted in your opening remarks--didn't he?--yes, that there was a recommendation. That is all I am asking you. Was there a recommendation or was there not a recommendation in 1999?

Mr. Holder. Well, as I said, Mr. Chairman, we have talked about this question, we have considered it, and we do not think that given the assertion----

The Chairman. You don't think the American people are entitled to know whether or not the Pardon Attorney, who is set up within the Department to make a recommendation to the President, obligated by departmental rules to make a recommendation, you don't think the American people deserve to know whether or not he made that recommendation, and if so, what?

Mr. Holder. Well, the American people----

The Chairman. You think that is covered by executive privilege?

Mr. Holder. The American people should rest assured that, in fact, pursuant to our regulations, a recommendation was made to the President in December 1996 and that there were subsequent communications thereafter.

The Chairman. But you are unwilling to tell us whether a recommendation one way or the other was made?

Mr. Holder. I have to respect the assertion of executive privilege, and I don't think, as I said, that I can go beyond that which I have said.

The Chairman. Well, I want you to know I don't respect it. I don't think there is a reason for an assertion of executive privilege under those circumstances.

Mr. Adams, the Department produced some notes and talking points where you appear to be counseling a Member of Congress and an advocate for clemency in this very matter on how to respond or how to improve the chances for a favorable decision. Now, is it the practice of the Department of Justice to provide advice to petitioners and their advocates on how to improve the chances for a favorable decision? And if not, why did you do it in this particular case?

Mr. Adams. It is definitely not the practice of the Office of the Pardon Attorney to provide advice to petitioners on how to proceed. I would have to see the document to which you are referring, Mr. Chairman.

The Chairman. I am talking about these talking points that you had written down. And here is what it said--this is a document you provided for us, at least the Department provided for us. Are you aware of this document?

Mr. Adams. I think so. If I could see it, it would help me.

The Chairman. Well, I would be glad to--could you give him a copy of this?

Let me read it to you while we are waiting and then try and get a copy to you, or else I will send you this one down. It says--these were talking points for a call to Congressman Gutierrez, I believe. ``Yesterday the Deputy asked me to contact your office to see where we stood on getting such a statement.'' In fact, let me just--do you have a copy of that? Let me just read it from the top.

``Doug Scofield, Chief of Staff for Congressman Gutierrez * * * referred me to Enrique Fernandez.''

``Back on November 5, Deputy Attorney General Eric Holder met with Congressman Gutierrez, and also with Congressman Serrano and Congresswoman Velazquez about commutations for the 17 persons serving federal time for various offenses that they and their supporters describe as having been undertaken for the cause of Puerto Rican independence. You might have been there--not sure?''

``I am the Pardon Attorney at the Department, and I was at the meeting with Mr. Holder--and we are still working on a recommendation to send over to the White House.''

Now, did you ever send that recommendation, a recommendation of any kind?

Mr. Adams. I would have to agree with what the Deputy Attorney General said----

The Chairman. So you are not even willing to say whether or not you sent a recommendation without even saying what it was? Yes or no.

Mr. Adams. I have to----

The Chairman. The American people are entitled to that.

Mr. Adams. No, Senator, I am sorry. Mr. Chairman, I am sorry. I have to respect the President's assertion of privilege, and I am not allowed to discuss it.

The Chairman. Why can't this White House just be open and just tell the truth? I mean, my gosh, this isn't something that is that tough. Let me just read the rest of it.

``At the November meeting, the Deputy Attorney General asked about the fact that these persons had not applied for a commutation themselves indicated lack of repentance.''

Let me read that again. ``At the November meeting, the Deputy Attorney General asked about the fact that these persons had not applied for a commutation themselves indicated lack of repentance. I think that Congressman Gutierrez in responding to this said that we would be provided with something in writing addressing the issue of repentance and how these persons have changed while in prison. Actually the Congressman may have mentioned a second time that we would be provided something in writing.''

And then this bottom paragraph, and make sure I read it correctly. ``Yesterday the Deputy asked me to contact your office''--I presume that is Congressman Gutierrez's office, right?

Mr. Adams. Yes.

The Chairman. OK. ``Yesterday the Deputy asked me to contact your office to see where we stood on getting such a statement. We are ready to finish up our report and recommendation fairly soon, and would like to have the statement on repentance to include, if it's likely to be forthcoming anytime soon.''

Did you do that? Did you----

Mr. Adams. I did write that.

The Chairman. Those were your talking points?

Mr. Adams. They were notes to myself for a telephone conversation that I was going to have with a member of Congressman Gutierrez's staff as a follow-up to a meeting that I had attended with Congressman Gutierrez along with Deputy Attorney General Holder.

The Chairman. Well, let me just sum up here. We have a letter from Margaret Colgate Love, Pardon Attorney, which has a stamp on it, July 25, 1997. ``Dear Mr. Ruff: On December 16, 1996, a report recommending denial of clemency for 17 Puerto Rican prisoners was forwarded to you.'' And then the rest of it. We will put that in the record.

So we have a recommendation against clemency by the then Pardon Attorney. Now, we also know that, ``The U.S. Attorney for the Northern District of Illinois recommended strongly against the commutation of sentence. Also, one of the sentencing judges of the Northern District of Illinois was quoted in the print media as opposing clemency.'' This was from the documents--these are from documents that you provided or the Justice Department has provided for us.

Then another document regarding the pardon--and I will put these all in the record in this order. Pardon of Puerto Rican Nationalists. This is the Deputy Attorney General call to Stephen Robinson, U.S. Attorney for the District of Connecticut. In background, it says, ``The U.S. attorney strongly opposed clemency in these cases. The sentencing judge also expressed the view that the sentences should stand.''

Then in another document, ``Pardon of Puerto Rican Nationalists: DAG Call to FBI Director Louis Freeh. Background: The FBI was the investigating agency in these cases, and continues to pursue a number of fugitives. Specifically, there is an ongoing fugitive investigation concerning Victor Gerena, a suspect in the Wells Fargo robbery in Connecticut and a subject on the FBI's 10 Most Wanted List.''

``The U.S. Attorney in the Southern District of New York is still pursuing FALN member William Morales, currently a fugitive, for his role in the 1975 Fraunces Tavern bombing that killed four people.''

``Director Freeh testified before Congress in 1998 that the FALN was one of the sources of domestic terrorism in the United States.'' That is another one.

Then another one with the same heading. Let me just read one paragraph from that, and I will put these all in the record. ``The FALN bombing at the Fraunces Tavern in New York in 1975, in which four people were killed and 50 injured, is still under investigation. According to a May 1998 newspaper article in a New Jersey newspaper and a June 1998 article in the Houston Chronicle, the Justice Department continues to pursue William Morales, a fugitive reportedly living in Cuba, for the bombing.''

I will put the indictment list of violations into the record at this point, too, which show that these people were involved in terrorism, according to this indictment.

Then I will put in an August 10, 1999, stamped matter regarding a briefing of the U.S. attorneys on commutation of the sentences of Puerto Rican nationalists, including a document on page 2 from the Northern District of Illinois where ``The U.S. Attorney's Office recommended strongly against commutation of sentence''; and from the District of Connecticut where, ``The U.S. Attorney's Office strongly opposed clemency in these cases.'' And then another one from the Southern District of New York, and then one with the Federal Bureau of Investigation.

I would like to put into the record the United States

Sentencing Commission information for us that makes it clear that this argument that these sentences were disproportionate is not a valid argument.

Then we will put into the record the over-hear of the conversation in Spanish of Inmate Adolfo Matos, which makes it clear, at least in my mind, that he didn't feel any particular remorse over what had happened.

And then I would like to put in the Five-Year Interagency Counterterrorism and Technology Crime Plan, Unclassified Edition, prepared by the Attorney General, which says this, among other things, but let me just read this one paragraph: ``The end of the Cold War and subsequent fall of the Soviet Union have drastically reduced the political underpinnings of left-wing organizations. Puerto Rican terrorist groups, such as the Fuertas Armadas de Liberacion Nacional Puertorriquena (FALNP) and the''--I am going to have to get my glasses, I can't read--``Ejercito Popular Boricua Macheteros (EPB-Macheteros), are an exception and represent an ongoing threat. They have previously used violence in an attempt to achieve independence for Puerto Rico. In an 11-year span, Puerto Rican terrorists were responsible for more than 100 bombings and arsons, in both Puerto Rico and on the U.S. mainland. Factors which increase the present threat from these groups include renewed activity by a small minority advocating Puerto Rican statehood, the 100-year anniversary of the U.S. presence in Puerto Rico, and the impending release from prison of members of these groups jailed for prior violence.''

[The letter and documents referred to are located in the appendix:]

Now, that was prepared September 1999, indicating that these people are still dangerous and still threats and still capable of terrorism.

I have to say that I am very concerned about the failure to answer some of these questions here today, and I am very concerned about what has happened here.

Senator Thurmond. Senator, there is a vote on.

The Chairman. I understand, Senator Thurmond. I will try and make it. How much time is left on that vote? OK.

Let me just say this: Mr. Holder and Mr. Adams, I am very disappointed in the way this administration and you on behalf of the administration have chosen to keep the truth from the American people on this issue. And I am especially disheartened because I have been more than fair with the Department and with both of you. As you know, the committee did not rush ahead with subpoenas the moment that clemency was granted; rather, I did my best to work with you. But the Department's response was to deny the committee access to witnesses and documents.

Even after an overwhelming bipartisan vote for a subpoena, I still went out of my way to work with you by agreeing to withhold the subpoena based on your assurances that you would produce documents and that you would come here and answer any questions or our questions.

Now, your response to our document requests have been late, incomplete, and inadequate, and now you are refusing to respond to perfectly fair questions that the American people have a right to know or that they have a right to ask of their public servants.

I can't tell you how disappointed this makes me to see this kind of tactic from our Justice Department. I can see executive privilege raised for Mr. Ruff and others who are directly involved with the President in the White House and are serving the White House themselves. Part of the problem, I realize, is the President's decision to invoke executive privilege to prevent the public from knowing the facts, and I guess you have to abide by that since he has directed you to abide by that.

Although you yourselves have said that you believe that you can back that up with law, I don't think you can.

I just ask: Why can't we get straight answers from the administration? The President has the power to do this. The question is: Should he have done it? Should you have acted differently? You have guidelines that say that you have to give a recommendation in these matters. We are pretty darn sure--and I don't know anybody who would rebut this--that a recommendation really wasn't given by you, Mr. Adams, even though the guidelines say you must give a recommendation.

I think the President needs to consider whether the public has a right to know why he chose to set these terrorists free. I think that is the least that could be done. And to me, if it is a mistake, it is a mistake. Certainly he has gotten away with a few of those in his day.

But the point is that we are talking about law enforcement here. We are talking about a failure to even ask basic questions about outstanding fugitives that the FBI lists on their 10 Most Wanted List, and letting these people go without even making the effort to do it.

Now, I am really concerned about it. I just don't feel good about what is happening here today. I don't feel good about what happened then. I acknowledge the President's right to do this. But I am questioning the Justice Department and the way they have handled it, you have handled this. And I am questioning whether or not there shouldn't be a tremendous tightening up down there so that this never happens again.

That doesn't mean the President couldn't ignore your advice. He could do that under the law and under the Constitution. And I would uphold his right to do that. But the fact of the matter is that there should have been a process followed here, and add it all up, the most heinous thing about all this is the victims weren't even consulted, as this seemingly sloppy, slip-shod, ridiculous, I think inadvisable process took place.

Now, Senator Sessions is going to come back and ask some questions, so I am going to have a short recess while I go vote, and when he comes back, he will be given the time to ask any questions he wants.

So, with that, we will recess until he gets back.

[Recess from 10:44 to 10:53 a.m.]

Senator Sessions [presiding]. I think Senator Hatch asked that I chair the meeting and that we go on forward. I think Mr. Holder will be here shortly. And I thought perhaps--there is Mr. Holder. Good to see you--that I would ask a couple of questions to Mr. Adams before we started.

Mr. Adams, was there a formal petition for clemency filed by each and signed by each and every one of the people who were given clemency?

Mr. Adams. No, Senator Sessions.

Senator Sessions. Is that unusual?

Mr. Adams. That is unusual, yes.

Senator Sessions. That is very unusual. I would say it is pretty astounding to me that we have clemency given I guess through political contacts and not even a petition filed by the individuals requesting it.

Mr. Adams. There was a petition filed by their attorneys, Senator Sessions.

Senator Sessions. Was it signed by the individuals?

Mr. Adams. No. And that, as I said, it is unusual, but it is not unprecedented.

Mr. Holder. I would also take a little exception, Senator, with all due respect, to the notion this was done through I think you said political contacts.

Senator Sessions. Well, we know that Congressmen and others

were involved in contacting the White House, don't we?

Mr. Holder. But I talk to Congressmen and Senators all of the time about a variety of things. I don't think there is anything untoward about those contacts.

Senator Sessions. Well, I am saying they were contacting the Department of Justice and the White House, but the petitioners themselves, the people who were asking to be given clemency, didn't even sign a petition asking for it.

Mr. Holder. Right. And as Mr. Adams indicated, that is unusual, but it is not unprecedented.

Senator Sessions. I think it is also interesting to note, and I think this ought to be stressed because it blows out of the water, it seems to me, and I will ask you to respond to it, doesn't it blow out of the water the stated spin of the White House that this, they had served already an unusually long time?

Senator Hatch asked from the Sentencing Commission, the Commission that sets proper sentences in America, to analyze what kind of sentence these offenders would have received had they been sentenced subsequent to the establishment, now over a decade, of sentencing guidelines. And they concluded that they would serve 30 years to life. That is without parole.

So, Mr. Holder, I know you questioned that that might not be exactly totally accurate. But those sentencing guidelines are pretty specific, aren't they?

Mr. Holder. Yeah, they are pretty specific. But, I mean, as you know, Senator, from your days as a U.S. attorney, I mean, there is a whole process that you have to go through before a judge ultimately decides in what range a particular person will end up. And we have some pretty contested hearings in that regard.

Senator Sessions. Well, you do. But in my opinion, and based on this report, I think there is no doubt that under present law, these defendants would have received substantially longer sentences than they have served before they were released. And I think 30 years to life, and that is without parole, indicates that this spin that these people have served too long a period of time is bogus, fraudulent and a sham. That is just my 2 cents' worth. I know you disagree with it.

Let me mention this to you. You noted, Mr. Holder, that nothing done by this pardon would weaken our effort against terrorists. Are you familiar with Attorney General Janet Reno? She is your boss, I assume.

Mr. Holder. I see her pretty frequently.

Senator Sessions. Are you familiar with the 5-year Interagency Counterterrorism and Technology Plan produced September, last month, of 1999? Are you familiar with that report?

Mr. Holder. Yep. It was run out of my office.

Senator Sessions. Are you aware that it finds in there, talking about the increased threat of terrorism, and this is quoting from her report, your boss, ``Factors which increase the present threat from these groups include renewed activity by a small minority advocating Puerto Rican statehood--the implementing statehood, the 100-year anniversary of the U.S. presence in Puerto Rico and the impending release from prison of members of these groups jailed for prior violence''?

Now, let me ask you, can we conclude anything other than that the Attorney General herself in her report last month has concluded that releasing these people has increased the likelihood of violence by Puerto Rican terrorists?

Mr. Holder. Well, I think given the terms under which these folks were released, which is where they had to indicate that they renounced violence, makes the report language that you cited it seems inapplicable. We are talking about people who as

a condition of release have pledged not to engage in violence. And if they engage in violence or even if they interact with people who they should not, they can be put back in jail.

Senator Sessions. Mr. Holder, I would disagree. I do not see a clear, consistent, sustained, unequivocal renunciation of violence by these individuals. That is one of the things that makes this such a shocking clemency act.

But I would just say to you that the Attorney General has made her statement after they were released, after they made this ``renunciation of violence,'' as you said, and she still said it is going to increase the likelihood of terrorist activity. Would you disagree with that?

Mr. Holder. I would not necessarily disagree with it, but I don't think we are talking--we are talking about apples and oranges here. I think the fact that, and it is clearly stated. I don't think it is not clear. I think it is very clear that, as a condition of release, they had to agree not to engage in violent activities, and there are mechanisms, as I guess Mr. Adams described before, to make sure that if they don't live up to those agreements, those pronouncements, that they can be placed back in jail.

Senator Sessions. Well, anyone in prison, if you ask them not to commit a crime if you let them go, will you promise not to commit another crime, will say yes; wouldn't you agree, Mr. Holder?

Mr. Holder. Well, two people to whom clemency, I guess, or commutations were offered in this case did not decide to do that. So I think you are generally right. But with regard to these folks, at least two of the people who had the ability, if they said the right things, to get out decided not to.

And I have to indicate also that in the time that they have been out, these prisoners have been making a lot of contact with people who are supervising them and asking them questions about whether or not they can meet with certain people. So it seems to me that at least for now they are taking seriously the agreements that they made.

Senator Sessions. Let me be frank with you. I am disturbed about a lot of things about this, but I will tell you the thing that most deeply troubles me, Mr. Adams, and both of you are involved in this critically, and that is that the President has had over 3,000 requests for clemency since he has been in office. Prior to these grants, only three had been granted.

Now, I have been a professional in the Department of Justice for 15 years prosecuting a lot of people. I have no doubt that probably 99 percent of those 3,000 were more deserving of a clemency than these 16 terrorists.

And let me ask you this, Mr. Adams: Does it make you uncomfortable, when you have to look into a petition for clemency from some mother and family of a young man who did something wrong and now has got 15 years for a drug offense, and you say no to them, and the President goes along and grants a pardon for these people? Does that bother you?

Mr. Adams. All I can say to you, Senator Sessions, is we try to--and I try to evaluate each case on its merits.

Senator Sessions. Well, don't you try to be consistent? Don't you believe that you have a duty as a member of the Department of Justice to try to, every person that comes before you, whether they have got political influence or congressional friends or money or power, but a poor person has the same chance when he comes before you as persons with influence?

Mr. Adams. I do try to be fair and consistent, yes.

Senator Sessions. And does not this trouble you that this decision was made, apparently at least over the opposition of your predecessor, as pardon attorney?

Mr. Adams. All I can say to you, Senator Sessions, is that

the duty of my office is to investigate each case that comes in and write a report on each case that comes in. The deciding authority----

Senator Sessions. Well, I think it is more than that, Mr. Adams.

Mr. Adams [continuing]. As you know, Senator, is the President.

Senator Sessions. I think it is more than just writing a report. And I will tell you what I said on the floor, when this happened, of the Senate, and right to your face and Mr. Holder's face, what you should have done, what Mr. Holder should have done and the Attorney General should have done is said, ``No, Mr. President. This is not just. We cannot continue to deny pardons day after day for more deserving persons, far more deserving persons some of them, and at the same time you grant this. And if you do it, we are out of here. You cannot do it, and we cannot serve in this administration or serve as your pardon attorney.''

Did you ever think about that?

Mr. Adams. Are you asking would I think of resigning over this?

Senator Sessions. Yes.

Mr. Adams. I think that the only way I would consider resigning, Senator Sessions, would be if I could conclude that I had done an inadequate job in this case or some other case or my office had done an inadequate job in this case or some other case. I cannot make that conclusion. I believe that I, personally, and my staff did a more than adequate job in this case, and we do that in other cases, too.

Senator Sessions. Well, I would say technically that is correct. I wish and believe on occasions that the leaders in the Department of Justice just have to tell Presidents, ``No, we just cannot do this. You don't understand what we are doing every day, Mr. President. This is too bizarre. This is too unjustified.''

And I will just finish up with this comment: Mr. Holder, you have insisted that the President's power in this regard is absolute. But I would suggest that there is a power in the Congress for oversight, would you not agree?

Mr. Holder. Not with regard to the President's power to grant pardons, no. I would not agree with that.

Senator Sessions. Well, are you familiar with Professor Akhil Amar and his article in the New Republic, no right-wing journal that? Are you familiar with that article?

Mr. Holder. No right-wing journal, and I am familiar with Professor----

Senator Sessions. This is what Professor Akhil Amar, says, ``Congress has a strong claim of oversight, `since it is both democratically accountable and specifically tasked to watch over the Executive Branch.''' And I am quoting. ``The argument that Congress has no proper role in investigating suspicious pardons or grants of clemency is constitutionally cockeyed. True, the Constitution vests with the President alone the pardon power. But the same is true of the powers to veto laws, to appoint Cabinet officers, to command the armed services, to negotiate treaties and to do a great many other things. These powers are not immune from congressional oversight. Why should the pardon power be any different?''

He goes on to say, ``Congress surely has a legitimate role in assessing whether the Justice Department's general system for processing pardon requests needs revamping.''

Do you disagree with that?

Mr. Holder. In that regard, yeah, I think there is a legitimate basis for this hearing, and that is to ask us questions about the way in which the Justice Department

performed. But if you ask the more general question about whether there can be oversight of the President, and for instance calling in the White House counsel to ask about the way in which that person interacted with the President, I don't think that that would be----

Senator Sessions. What if there were a corrupt basis for this President's decision? Who is going to inquire about that?

Mr. Holder. People in law enforcement.

Senator Sessions. Well, has anyone inquired about that? Have you investigated whether or not the President had a corrupt motive in this?

Mr. Holder. We don't have any basis to start that kind of an investigation. I have not seen any allegations in that regard.

Senator Sessions. Well, I would just say--I know my time is up--that there is no, it wasn't done because these individuals gave cooperation; it wasn't done because they served too much time; it wasn't done because the victims recommended it; it wasn't done because the prosecutors had recommended it, they all opposed it, as did the FBI and the Bureau of Prisons; it wasn't done for a whole lot of other legitimate law enforcement reasons; it wasn't done because they had too long a sentence, if you considered it, so I do not know what the motive is. I think we have a right to inquire about it.

I think the President jeopardizes the integrity of the Department of Justice when he leaves a record this bizarre on the table and refuses to provide a fundamental basis for his acts. And I feel strongly about it. This is one of the most disturbing hearings that I have seen since I have been in this Congress, the most disturbing.

And I think the reasons for this action are just totally without merit, and it is just not justified, and it undermines the rule of law and the respect for justice. And how can young, innocent people who--not innocent people--who really made errors of judgment, be denied repeatedly clemencies and have these granted? It just does not make sense to me.

Mr. Holder. Well, obviously, Senator, with all due respect----

Senator Sessions. And please respond. I have taken advantage of my time.

Mr. Holder. That is fine. I would disagree with substantial parts of what you said there.

And I can understand how people could disagree with what the President has done here. I mean, he has indicated in his letter I guess of September 21 to Congressman Waxman that he understands that this decision might be unpopular.

What concerns me, though, is that we ascribe some kind of improper motive to what the President has done here. Disagree with him and disagree with him vehemently. In the absence of some kind of specific proof, some kind of real indication that something improper, inappropriate has occurred here, I think we should be very careful about ascribing those kinds of motives to the President's actions. It is something that I think we do, to be very honest with you, we do too often here in Washington nowadays. And why can't we simply say that he was wrong, say it in the strongest terms that you want, but not say necessarily that somebody was corrupt or acting inappropriately.

The Justice Department, I believe, has acted here in an appropriate fashion. With regard to I guess what Chairman Hatch was saying earlier, we have tried to do the best we can in turning over substantial amounts of documents. People in the Justice Department have worked huge numbers of hours in trying to respond to what I think are legitimate requests of this committee.

The decisions made by the people in the Pardon Attorney's

Office I think are, in fact, honorable ones. They followed the regulations, as they have been--as they are given to us, as they have been set out.

Again, disagree with the decision, disagree with the way in which perhaps we have conducted ourselves, but I think we should be very cautious in trying to ascribe inappropriate motives to the actions that were taken by the President or people in the Justice Department.

Senator Sessions. Well, I just didn't ascribe it. I suggested at least people to believe that that is possible when we don't have any other reasonable basis for it, that I can see, and you are refusing to tell the complete story. But I would yield.

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator Kyl [presiding]. Thank you. Chairman Hatch asked me to take the meeting at this point.

I think, just to conclude this point and then I want to move to another point, that suggests to me the Department of Justice has not done a good job in this case. But when it appears that all or most of the recommendations from professionals were not to do this, and the President has not seen fit to explain publicly certain things that he has claimed privilege for, then it raises the questions, not only in Senator Sessions' mind, but in my mind as well.

And I think that if the President is going to take an action like this that he knows is going to be unpopular, where his motives would be questioned, that he may need to consider that he needs to lay everything out on the table and be able to respond to the fact that the professional recommendations were against the action that he took.

I would like to move over to the issue of the victims. I understand the chairman asked one brief question on this, but my understanding is that neither DOJ, generally, nor your office, Mr. Adams, notified the victims of the various crimes that were involved in the actions for which the conspiracies were prosecuted prior to the action that the President took in this case; is that correct?

Mr. Adams. There was a discussion, Senator Kyl, between my office and the U.S. Attorney's Office in Chicago about their contacting victims. The U.S. Attorney's Office were told they were free to contact victims if they wanted to.

Senator Kyl. Is it correct that there was no contact?

Mr. Adams. I can't say that.

Senator Kyl. Well, let me quote, I have a lot of records, personal notes that were taken, ``Did not contact any victims, didn't show any copy to any victims, don't think USAO contacted victims, e-mails.''

Who is Chris Watney?

Mr. Adams. She is an employee of the Public Affairs Office of the Department.

Senator Kyl. And Myron Marlin?

Mr. Adams. He is the director of that office.

Senator Kyl. Are you aware of an August 25 e-mail from Watney to Marlin which, among other things, says, ``Also, Roger Adams wanted me to point out to you that Reno once said that victims are consulted in our pardon review process. This is not always true, and it isn't true in this case. He wanted to make sure Reno stayed away from questions about victims.''

Are you familiar with that e-mail or do you contest that you made that point to Myron Marlin?

Mr. Adams. I don't contest that I made that point, no.

Senator Kyl. All right. Who is Jamie Orenstein?

Mr. Adams. Jamie Oren----

Mr. Holder. An attorney in the Deputy Attorney General's Office.

Senator Kyl. Do you recall, Mr. Adams, a memo sent on August 23 to Jamie Orenstein, in which, among other things, you said--you are talking about the small percentage of pardons involving victims of crime, particularly violent crimes, you said, ``Any requirement, either in a constitutional amendment that actually makes it to enactment or revision of our regulations that requires us to consult, even perfunctorily, with victims, will cause a big change in the way we operate.''

I am skipping down now. You conclude by saying, ``Media hostile to the commutations will inevitably raise the fact that the Department did not consult with victims in the FALN cases.''

Are you familiar with that memo?

Mr. Adams. Yes, I am.

Senator Kyl. Do you contest that you wrote that?

Mr. Adams. No, I don't.

Senator Kyl. So ``the fact that the Department did not consult with the victims in the FALN cases.''

Mr. Adams. I am still--I have sent that memo. I am still not 100 percent sure what the U.S. Attorney's Office in Chicago----

Senator Kyl. Do you have any information to suggest that anybody ever did, in the U.S. Attorney's Office, ever did contact the victims?

Mr. Adams. It was a discussion between----

Senator Kyl. Do you have any evidence to suggest that anyone ever did?

Mr. Adams. Other than that discussion, no.

Senator Kyl. OK. And that discussion simply involved one situation in which somebody said, ``You are free to do so.''

But you also point out that it was a fact that the Department did not consult with the victims.

The U.S. Attorney's Office in Chicago is part of the Department, isn't it?

Mr. Adams. Yes.

Senator Kyl. Thank you.

Mr. Holder. Senator, we have conceded that--or I have conceded--that the Department I think, generally, as I said before, does a pretty good job in contacting victims, but we can do a better job and that we need to I think work on ways in which we make sure that we contact victims as part of this process.

Senator Kyl. This is a pretty big case not to contact the victims, though, isn't it? I mean, this is a--pretty big mistakes were made.

Mr. Holder. I'm sorry, pretty big?

Senator Kyl. You say sometimes mistakes are made. You know, we do a pretty good job, but we don't always do our job. This is a very big case for there not to be contact with victims, especially considering all of the contacts with various groups that supported the petition for clemency, is it not?

Mr. Holder. Yes. I wish that I would be in a position to tell you that we had contacted A, B, C and D. I am not in a position to say that. I cannot say, I don't know exactly what kinds of contacts were made by the various offices with the victims. But I think in this particular case, and generally, we could have done a better job.

Senator Kyl. Yes. All of the evidence I have is that there was no contact. And if somebody will come forth and say that there was, let me know. But all of the victims say they weren't contacted. So I don't think we should leave pregnant out there the notion that maybe somebody was contacted. All of the

suggestion is that there was no contact.

Now, the failure of contact was not because the Department made an explicit decision that, under the law, it should not do so or didn't have to do so, was it?

Mr. Adams. No.

Mr. Holder. No.

Senator Kyl. In other words, it would have been better had it been done in this case is the position that you are taking.

Mr. Holder. Yeah. I mean, I think, yeah, I think clearly it would be better. It would certainly make this hearing a lot more pleasant if we had had an ability to say that victims had been contacted.

Senator Kyl. Right.

Mr. Holder [continuing]. Or victims had been contacted or if victims had been contacted.

Senator Kyl. Let me just ask you, I am sure you have thought about this, do you believe that under the current statutory framework, a couple of statutes involved, that somebody, either at the Department or the Office of the President, had an obligation to contact victims?

Mr. Holder. As I understand it, I think that is an issue actually being considered by our Office of Legal Counsel. I am not at all certain that under the statutes that exist right now that there is that obligation. I do think, however, that we ought to look at the regulations that exist and maybe tinker with them so that that does become something that is, if not statutorily required, but at least something that is required of us in the process.

Senator Kyl. Would you argue that because the clemency power is specifically a presidential constitutional power that the President is above the law, that he would not have an obligation, notwithstanding Department policy or binding statutes on other DOJ personnel?

Mr. Holder. I am not sure I would characterize it as the President being above the law. But I think a President, any President, quite frankly, is, I think, free to make pardon-commutation decisions on whatever he or she wants to make them on.

Senator Kyl. Right. What I am saying is, and let me rephrase the question, and then I will turn to Senator Specter. Off the top of your head, would it be your legal judgment that Congress could impose a requirement of notification in a clemency case, where we understand the power is actually exercised by, of deciding to do it or not, is exercised by the President, but there are statutory procedures under which the Department is involved in the process, including the clemency--

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Mr. Holder. Again, this would be off the top of my head, but I do not think that Congress would have an ability to do that, with regard to how the President exercises his authority in the pardon-commutation process.

Senator Kyl. So for there to be a requirement of notice in a case like this then, it would require a constitutional amendment?

Mr. Holder. Well, if you want to circumscribe how the President acts, I think that might be right. On the other hand, there are regulations that we have in place that specify how the Justice Department should do its job and how we should interact with the President.

Senator Kyl. This will be my last point. Since Department regulations didn't work in this case, and the Congress might want to take this a little bit more seriously than the Department of Justice did, if we adopted legislation that specifically requires notice in a case like this by the Department of Justice, clearer than it already is, although it

is pretty clear, you would concede then that, in a case of presidential pardon or clemency, the Department of Justice could be required by Congress to provide that kind of notice to victims.

Mr. Holder. The Justice Department could be required to provide the President notice.

Senator Kyl. No, victims notice.

Mr. Holder. Victims notice. I am not sure about that, off the top of my head, Senator.

Senator Kyl. All right. Well, then, would you please inform the committee with your legal opinion.

Mr. Holder. That is fine.

Senator Kyl. We are trying to do this one way or the other, by statute or by constitutional requirement, and whatever it takes, we want to get it done because obviously departmental procedure didn't work in this case.

Mr. Holder. That is fine. We will get back to the folks who are I think discussing this question in the Department now and get something back to you.

The Chairman. Thank you, Senator.

Senator Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator Specter. Thank you, Mr. Chairman.

Mr. Holder and Mr. Adams, I am concerned about a number of factors, but especially about the overall oversight function of the Congress and the Senate on executive action, and I understand that there are constitutional issues here which have some bearing. But I note the Attorney General's report in September 1999, where she focuses on this issue at page 11 and says, ``Puerto Rican terrorist groups such as the FALN and EPB are an exception and present an ongoing threat.'' That is in the discussion of terrorism.

I note further that the regulations relating to the pardoning power of the President, 1.5 on disclosure, and I believe this would apply to memoranda prepared by the pardon attorney, talks about petitions, memoranda, communications, et cetera, ``may be made available for inspection, in whole or in part, when in the judgment of the Attorney General, their disclosure is required by law or the ends of justice.''

Now, that suggests to me that where you have the pardon attorney functioning in an office created by statute, funded by the Congress, that you have a little different situation here with the regulations, leaving it to the Attorney General.

In your prepared statement, Mr. Holder, you make this statement, ``The privilege is properly asserted. Whereas, here, the President's need to maintain the confidential nature of presidential communications at Executive Branch deliberations outweighs Congress's needs for the information contained in executive privilege.''

I think that what purports to be a statement of law is weighted a little heavily in favor of the President, which I am not surprised he would make. I think the Congress has broader authority on the issue of executive privilege. But taking the language which you are articulate here, you have a balancing test; confidential nature of presidential communications and Executive Branch deliberations outweighs Congress's need for the information contained in privileged documents.

Now, where Congress seeks to exercise oversight over the pardoning authority, and we have a statement by the Attorney General after the commutation about these terrorist groups representing ``an ongoing threat,' ' it seems to me that the kind of inquiries which are being made here, especially by

Senator Sessions, is pretty direct, but a little more direct this morning than I have seen him in a while, and you have a resolution by the Congress, where I think it was 97 to 3, an overwhelming number to show, including almost all of the members of the President's own party, and I don't read this as a matter for partisanship at all, that there has been a very emphatic statement by the Congress of our need to know what went on here.

There may be some area for legislative change or maybe there would be an area for constitutional amendment. But sticking with the legislative oversight, and I raise this issue not only for this matter, but for ongoing assertions of privilege and refusal to turn over documents, where this committee tries to exercise oversight, wouldn't the President be better advised, and this gets into advice to the President, but perhaps I ought to put it in terms of the Attorney General's authority on the disclosure here.

Wouldn't the Attorney General be better advised to leave a little more leeway for the Congress to see what happened here and to hear from Mr. Adams what his recommendation was?

Mr. Holder. Well, I think that we have done a fairly extraordinary job here in providing to this committee substantial numbers of documents, tapes. We are obviously here making ourselves available and answering questions to the best of our ability.

Senator Specter. Well, you are available, but you are not answering the question as to what was the recommendation.

Mr. Holder. Well, we are answering any question that we think we can, and the only ones that we are not answering are those that we think are--we cannot answer because of the assertion of executive privilege. Beyond that, we have made ourselves open to the questions and, as I said, provided documents in that regard as well, and tapes as well.

Senator Specter. Mr. Holder, how does the President exert executive privilege? Is it something that he must do personally?

Mr. Holder. Well, the Justice Department will express an opinion as to whether or not an assertion of executive privilege is appropriate in a particular instance, and then the President actually asserts executive privilege.

Senator Specter. Well, how has he asserted executive privilege here?

Mr. Holder. I will be honest with you. Mechanically, I am not sure exactly what happened here.

Senator Specter. Well, I think it is an important point that the President ought to focus specifically on the parameters of the issues, which would be in part defined by the overwhelming vote, more than 90 members of the Senate concurring, and the precise nature of the regulations with the Attorney General on their face--the regulations' face, having authority to make the disclosure.

What I would ask you to do is to return to the President with the strong sense you have had here today and acquaint him with your balancing test--I am sure he knows about the resolution which was passed overwhelmingly--and make a determination if he might not think that we have some legitimate need, as you articulate it in your balancing test, Congress' need for information contained in privileged documents. And I would like to focus with particularity on exactly how he asserts it, that it is a personal assertion from him.

Mr. Holder. We will certainly convey those feelings to the President, although I think, as you indicate, based on the vote of Congress and in anticipation of the hearing here, I think the President is probably pretty well aware of the feelings of

the members of this body.

Senator Specter. Well, I would also like you to specify to him the Attorney General's finding. He may not know of all of that, but that is a pretty tough finding, categorizing FALN as, ``representing an ongoing threat,'' especially after the President has made the declaration of clemency. I think there is a fair need to pursue this in some specification.

Thank you very much.

Mr. Holder. Well, I just would say that we should not read the Attorney General's statement in the Five-Year Plan as indicating that the release of these prisoners, given the conditions upon which they were released--that that statement refers to those people, given those conditions. That is not the way I read the Attorney General's statement in the September 1999 document.

The Chairman. Then what does it mean?

Senator Specter. Well, why not, Mr. Holder?

The Chairman. What does it mean?

Senator Specter. This is a statement which she has made after the grant of clemency. This is a statement which deals specifically with the FALN, ``representing an ongoing threat.'' It seems to me that where you have people who are part of the FALN and you are talking about deterrence and whether they are going to engage in terrorist activities in the future, there is an unquestionable impact upon members of the FALN in thinking, in effect, they can get away with it if executive clemency has been granted, and where she identifies this specific group--characterizes them as an ongoing threat. It seems to me it is very relevant and very probative on the issues we are discussing here.

Mr. Holder. I mean, I would certainly say it is relevant, but I don't think that this statement can be read in quite the way that you have indicated. As I said, this is a September 1999 document. That is true, but I do think that given the fact that we are talking about the release of people here on the conditions that have been specified that that in some way modifies that which we see on the page here.

Senator Specter. Well, Mr. Holder, I think that there is a fair amount of latitude for varying opinions on executive privilege and a balancing. Staff has very adroitly produced a chart here which puts the language before everyone to see, including C-SPAN, and you have the Attorney General commenting about, ``represent an ongoing threat,'' this specific group.

It seems to me there is little room for argument that granting clemency to members of that group has an impact in the context of an Attorney General's report which talks about terrorism as an effort to obtain political gain. You have this issue of Puerto Rico still before the public, a matter which is still pending, and you have an ongoing threat by this terrorist group and you have specific members being commuted. That has to have an impact on the threat from that group.

What is wrong with that reasoning, Mr. Holder?

Mr. Holder. Well, I do not think that the language, ``impending release from prison of members of these groups jailed for prior violence,'' quite frankly refers to the people whom we are talking about here today, given the way in which they were released.

Now, this is a document that has a date of September 1999 on it. I don't know exactly when that language was prepared and I don't know exactly----

Senator Specter. Who cares when it was prepared? If it is issued in September 1999, it is issued after the fact. And I didn't take the time to read the other language: ``They have previously used violence in an attempt to achieve independence from Puerto Rico, arsons in both Puerto Rico and on the U.S.

mainland. The factors which increase the present threat from these groups include renewed activity by a small minority advocating Puerto Rican statehood, the 100-year anniversary of U.S. presence in Puerto Rico, and the impending release from prison of members of these groups jailed for prior violence.'

Let me make one addendum. I voted in favor of statehood for Puerto Rico. I don't think this really implicates the broader issues involved, and people who want statehood for Puerto Rico should not be branded with this terrorism. But there you have an elaborated statement by the Attorney General about the threat by the FALN, and here you have the President having granted clemency and the Attorney General releases a report after the clemency is granted.

I think that the Attorney General has to be bound, and the administration does, by a September 1999 date, unless we are to conclude that these reports are written and not read and issued.

The Chairman. Well, let me interrupt here. I think that last line does kind of make it pretty clear that you can't just blow this off, in your own report just a month ago.

Senator Specter. A pretty impressive last line, ``impending release from prison of members of these groups jailed for prior violence.'

The Chairman. Yes, I don't see how you get around that.

Senator Sessions. ``Factors which increase the present threat include the release from prison of these members.' That is the Attorney General's own finding.

Senator Specter. Mr. Holder, that is pretty close to a confession. It is more than an admission.

Mr. Holder. I have not confessed or admitted anything. I do not read it that way. You know, we can disagree on that, but--

--

Senator Specter. Let me ask you if you had read it.

Mr. Holder. What?

Senator Specter. You said you didn't read it that way, but had you read it before today? Had you read it before the report came out?

Mr. Holder. I have got it right here, underlined in my book. Page 11, I think, right?

Senator Specter. Well, there is some corroborating evidence.

Thank you very much, Mr. Chairman.

The Chairman. Thank you, Senator Specter.

Without objection, I will put two letters from Senator Leahy in the record right after his remarks, if I can.

[The letters referred to follow:]

United State Senate,
Committee on the Judiciary,
Washington, DC, September 21, 1999.

The Hon. Janet Reno,
Attorney General,
Department of Justice,
10th Street & Constitution Ave., NW,
Washington, DC.

Dear Janet: I was troubled to learn through both press reports and testimony at a recent committee hearing that victims of some of the bombings perpetrated by the FALN were not consulted or even contacted with regard to the clemency offers made to some members of that organization. Indeed, one victim reported that he learned of the clemency offers through a relative who had heard media reports.

I would appreciate being advised as to whether the views of any victims of FALN violence were considered with respect to the clemency offers. I would also like to know whether there are procedures and policies in place to ensure that the rights of crime victims are

respected in the clemency process.

Thank you for your assistance.

Sincerely,

Patrick Leahy,
United States Senator.

U.S. Department of Justice,
Office of Legislative Affairs,
Washington, DC, September 29, 1999.

The Hon. Patrick Leahy,
United States Senate,
Washington, DC.

Dear Senator Leahy: I am writing in response to your letter concerning consideration of victims during the clemency process. The Department appreciates the opportunity to provide you with some general information concerning existing policies and procedures for ensuring that the interests of crime victims are respected in the clemency process.

The impact of a crime on a victim(s) is important not only throughout the trial and sentencing, but also in considering a petition for executive clemency. In connection with the evaluation of clemency petitions that appear to have some merit or that raise complex factual or legal issues, the Pardon Attorney routinely requests information, comments, and recommendations from United States Attorneys, including, where appropriate, information on the victim impact of a petitioner's crime. In describing the role of the United States Attorney in clemency matters, the United States Attorneys Manual expressly advises that ``[t]he United States Attorney can contribute significantly to the clemency process by providing factual information and perspectives about the offense of conviction that may not be reflected in the presentence or background investigation reports or other sources, e.g., * * * the victim impact of the petitioner's crime.'' U.S.A.M. Sec. 1-2.111. Furthermore, a significant factor that is taken into account in determining whether to recommend clemency is the extent to which the petitioner has made restitution to the victim(s) of his or her conduct. U.S.A.M. Sec. Sec. 1-2.112, 1-2.113. When requesting comments on a clemency petition, the Pardon Attorney routinely directs the United States Attorney to these provisions for guidance in preparing a recommendation.

Finally, the Department's clemency regulations do not presently require victim notification before a clemency recommendation is made. We will, however, explore this concept with the White House. We believe that presidentially approved guidelines or regulations are the most appropriate way to address this issue.

I hope this letter responds to your concerns. We look forward to working with you on this and other issues involving the Department.

Sincerely,

Jon P. Jennings,
Acting Assistant Attorney General.

The Chairman. Let me turn to Senator Ashcroft at this time.
Senator Ashcroft. Thank you, Mr. Chairman.

Mr. Holder, are you aware that the Justice Department has now taken the position that it opposes any aspect of a victims rights constitutional amendment that would require notice to victims before clemency would be granted?

Mr. Holder. That we have taken a position against that?

Senator Ashcroft. Is it your view that you don't take such a position against it?

Mr. Holder. I was going to say that is not--I am not aware that we have taken that position. I believe that we are in the process of interacting with members of Congress on that and discussing that internally. I am not aware that we have taken

that position.

Senator Ashcroft. Well, the Justice Department has contacted a number of Senate staff, including mine, and I think Senator Kyl's and others, and I think Senator Feinstein's, to that effect.

Is it the position of the Justice Department that you want to be on record as saying that victims of violent crime have no role or say in whether criminals who victimize them should be sent back out on the street? Do you want a situation where there is no requirement for consultation or information?

Mr. Holder. Clearly not. We have, I think, been in the forefront of getting victims more actively involved in the process. It has been a failing of our criminal justice system, I think, over the years that we have not listened to victims.

Senator Ashcroft. So is it your view that the policy of the Department is to consult with victims?

Mr. Holder. Yes, that is certainly the policy of the Justice Department. As I have said, with regard to the pardon process, I think there are ways in which we can do our job better than we have done in the past.

Senator Ashcroft. But if that is the policy, I wonder about this memo to Jamie Orenstein from Roger Adams which says that any requirement, either in a constitutional amendment that actually makes it to enactment or a revision of our regulations that requires us to consult even perfunctorily with victims, will cause a big change in the way we operate.

If it is your policy to consult with victims, why would it be a big change----

Mr. Holder. Well, I think the memo----

Senator Ashcroft [continuing]. If you were just to even have to consult with them on a perfunctory basis, let alone in a substantive way?

Mr. Adams. Senator Ashcroft, what I was attempting to convey in that memo was any requirement that we had to consult with any large number of victims in pardon and/or commutation cases would require a big change in the way my office operates. I have a very small office; I only have six attorneys, counting myself. I simply was saying we don't have the staff to do this ourselves. The way the Department----

Senator Ashcroft. How many commutations and pardons, prior to these FALN pardons, did your six attorneys participate in since January 1993?

Mr. Adams. How many were granted?

Senator Ashcroft. Yes.

Mr. Adams. Before this, there were three commutations and 108 pardons.

Senator Ashcroft. So you would have had 111 situations for six attorneys to give notice on over the course of 6 1/2 years?

Mr. Adams. We have had several hundred cases, Senator Ashcroft. We get several hundred petitions a year.

Senator Ashcroft. My view is--let me just say this--that I am not saying before you considered anything at all that you would have to involve people in the consultation. What we are saying is before you grant a pardon, it seems to me that you could go through quite a bit before you decided it was a serious enough matter to consider.

But for six people to handle 111 cases--I happen to have spent 8 years as attorney general of a State and we had attorneys that were writing 30 appellate briefs a year, and 6 times 30 would be 180. You are talking about 111 cases over the course of 6 years for six people, and you are saying even a perfunctory contact--well, first of all, I find this to be a contradiction. If it is a policy of the Department to try and contact them, and now you say even a perfunctory contact would

change your practice, and then you say, well, while we do want to do it, it would be burdensome for us to do it for six people to handle 111 cases of additional contact in 6 years, I find that very difficult to understand.

Mr. Adams. Well, just to put this in some context, Senator Ashcroft, it is not 111 cases. Since 1993, my office has received almost 5,000 clemency petitions, counting both pardon and commutation petitions. What I was saying in that memo was it would be a big change for my office. There may well be a lot more effective ways for the Department to contact victims, such as through the U.S. attorneys' offices. There may be other ways. Whether we should do that more is an open question.

When I was writing that memo to Mr. Orenstein, who is a member of Mr. Holder's staff, I was looking at it----

Senator Ashcroft. Well, then maybe I just need to get this clear. I think Mr. Holder just said to me very clearly, and I want to affirm this, that the Department of Justice does not oppose clemency notice provisions in the victims rights amendment which it otherwise had expressed support for.

Mr. Holder. We have not taken a--I think you asked have we taken a position in opposition and I had said we have not done that. We are in the process of talking about that.

Senator Ashcroft. So you do not oppose it?

Mr. Holder. We were in the process, I think, of deciding what our policy was going to be.

Senator Ashcroft. Have you opposed it?

Mr. Holder. Senator, I think I just answered the question. We are in the process----

Senator Ashcroft. Well, maybe you could just answer it with a yes or no. Have you opposed it, and if you haven't opposed it, do you now oppose it?

Mr. Holder. I would say that we have not opposed it. I would not say that we have endorsed it either. I would say we are in the process of----

Senator Ashcroft. Maybe I could ask you just to answer the question.

Mr. Holder. I am; I am answering the question that you are asking me in the best way that I can.

Senator Ashcroft. OK.

Mr. Holder. That is not maybe conducive to a yes or no answer. I am doing the best I can, Senator.

Senator Ashcroft. Well, I think whether or not you have opposed it should be conducive to a yes or no answer. Have you opposed it?

Mr. Holder. We have not opposed it.

Senator Ashcroft. And do you now oppose it?

Mr. Holder. We do not now oppose it.

Senator Ashcroft. Thank you very much.

Mr. Holder. We have not established a position.

Senator Ashcroft. That was easy. I think that was painless. I mean, that is all I really wanted to ask you if that was the case.

Is it your view that the President's pardoning power is subject to no review by the Congress, that it is an outright, arbitrary power?

Mr. Adams. Could I respond to that, Senator?

Senator Ashcroft. May I ask Mr. Holder a question, please?

Mr. Holder. I would not say that it is without some degree of oversight in the sense that we are here today as you are asking members of the Justice Department about our roles in the process.

Senator Ashcroft. I guess what I am really trying to find out is whether you believe that the President has no limit on his power to grant pardons.

Mr. Holder. I am not sure that I find in the Constitution,

subject obviously, of course, to the notion that one cannot do things illegally in the sense that, you know, take bribes or something along those lines----

Senator Ashcroft. Is it your view, then, if the President were to receive a bribe for issuing a pardon, that would be wrong and that is outside his constitutional authority?

Mr. Holder. That would be wrong and illegal, yes.

Senator Ashcroft. So that if the Congress wanted to discover that, the Congress would have to ask the President to answer for motives about his pardon because one of the motives might be improper?

Mr. Holder. It might just be that Congress does not have that power. It might simply be that a U.S. attorney or somebody would have to investigate that case.

Senator Ashcroft. And on what would you base your idea that there are supervisors to the President in his responsibility there that wouldn't be congressional? I thought we spent a good deal of the last couple of years saying that the only thing that could ever supervise the conduct of a President was the Congress.

Mr. Holder. I mean, if a President engaged in illegal activities, the President is like any other citizen.

Senator Ashcroft. He is, so he should be prosecuted and impeachment doesn't have anything to do with it, like any other citizen, Mr. Holder?

Mr. Holder. No, no. There are certain things that obviously would have to happen first.

Senator Ashcroft. I mean, we spent a lot of time last year with people from the Justice Department suggesting to us that prosecution of a President is sort of an impossibility, that the rightful thing is for congressional oversight to evaluate whether something illegal has taken place.

Mr. Holder. And I am saying----

Senator Ashcroft. I want to make a point here, and I think you have helped me make it. It is that there are real questions about whether a President has a totally arbitrary right to pardon. And in the context of the lack of a totally arbitrary right, the oversight agency for the President would be the Congress to evaluate whether anything improper, out of line, has taken place. For that reason, I think there is a valuable line of questioning for the oversight authority of the Congress to ask why, and that is really what this Congress has sought to do, is to ask why of this President. Frankly, that is a question that I wanted to resolve.

I also wanted to get clearly from you that you do not oppose clemency provisions in the victims rights amendment, and frankly I am interested to know that you agree that Mr. Adams did not state the position of the Justice Department that it would be a big change for you to have to give notice.

Mr. Holder. Well, I mean the ``we'' in that memo that you were talking about, I think, refers to the Office of the Pardon Attorney. It is a much more restricted statement there. It doesn't refer to the Justice Department generally.

With regard to the question of the President doing something illegal, I think that a prosecutor would have the ability to investigate allegations involving the President. You could not charge a President until the President had been impeached or had left office.

Senator Ashcroft. Maybe I should then ask this question. Is it your view that until a prosecutor had investigated the President, the Congress would not have authority to inquire of his motives?

Mr. Holder. Through impeachment, clearly, I think the Congress would. I think that is clear, through the impeachment process.

Senator Ashcroft. First, I want to make one thing very clear. I am not suggesting that here. I am talking about the theory of the Constitution. But when you talk about the President's ability to shield his communications and to exert privilege--and I really think Senator Specter made very interesting questions about whether the privilege can spring as a result of its existence from the Department and not have to be asserted by the President himself, is a kind of interesting thing.

But I don't want to suggest that we are involved in a situation that is in any way related to impeachment. I just want to sort of set the boundaries that even in rights that a President pretty clearly has, very broad rights, there is a role for congressional oversight, and I think the kinds of things that we have discussed demonstrate that.

The Chairman. Thank you.

Senator Abraham, we will turn to you.

Senator Abraham. Thank you, Mr. Chairman.

I want to return back, Mr. Adams and Mr. Holder, to this issue of trying to elicit information and the views of victims, and try to get a sense of your position on this a little more clearly as we might contemplate ways we might proceed.

It seems to me--and I suspect from your perspective after this hearing you feel the same way--that there is at least a fair amount of congressional sentiment that there ought to be some solicitation of views as part of your process. And I guess I am trying to be constructive, or I am at least going to try to be constructive here in thinking through ways that could happen.

Now, my impression from your memo here that dealt with this issue, Mr. Adams, is that there is some concern in your office in terms of the manpower to cover some type of victim contact if every single case or petition that came to you required that. But it seems to me that from what I gather in your testimony, and so on, that there is a sort of a cut made by you folks before you go to the U.S. attorneys, that you make some determination initially based on issues of whether an issue of material fact is raised or any suggestion that the application may have some merit or if the case presents significant issues, et cetera, which precede any determination to start the process toward the U.S. attorney. Isn't that right?

Mr. Adams. That is correct, Senator.

Senator Abraham. Now, that reduces a fair number. As I understand it, more than half of the cases essentially don't get to that stage.

Mr. Adams. A significant number are handled without going to the U.S. attorney because we realize that----

Senator Abraham. The merits just don't----

Mr. Adams [continuing]. The merits are not there. We realize U.S. attorneys are very busy; U.S. attorneys personally and U.S. attorneys' offices are very busy places. We try not to bother them with cases that are meritless.

Senator Abraham. I am wondering, I guess, if we can then maybe hone this process in on only those instances where there is a victim involved and it goes to the stage where you have passed it on. I am wondering, do you feel that it would be feasible either to have your shop or the relevant U.S. attorney involved take an action at that point to solicit the views of the victims?

Mr. Adams. It is still not feasible for my shop to do that because I have got six people sitting here in Washington. I don't really have the ability. It would indeed be feasible, given an unlimited amount of money and willingness on the part of U.S. attorneys to impose some sort of requirement through regulation.

And, you know, let me point out, too, the regulations are approved by the President. The President would have to say that this is what he wants done. But, yes, in a perfect world, with unlimited funds and unlimited willingness on the part of U.S. attorneys, it would indeed be possible to have a regulation requiring----

Senator Abraham. Well, obviously----

Mr. Holder. Senator, I disagree respectfully with my colleague here because I am not sure we need quite a perfect world. I think we could craft a way, given even the resources that we have. It would have to involve more than the people in the Pardon Attorney's Office, but I think that we have ways in which we could, in an appropriate number of cases--and these are not the cases, I guess, that we would call summary denials. I think there are ways in which, if we put our minds to it, we could probably come up with ways to contact victims.

Senator Abraham. Well, it seems to me we could, too, and I guess I would say I appreciate your interjection, Mr. Holder, because I was going to say to you, Mr. Adams, that everybody who comes before us can say in a perfect world we could do this, and so on. We always have to make some assessment of priorities, and so does the Department of Justice and so do the U.S. attorneys.

But it seems to me inconceivable that the position of your office, an office which is charged with the responsibility ultimately of making these fairly significant recommendations as to the granting of pardons, would evoke those kinds of considerations to totally deny victims a role here and not sense that there might be a tremendous amount of public and congressional, and I would suspect within the Department support for having a balance to this. I mean, clearly, the process is set up right now toward the incarcerated criminal having a great deal of say. And the notion that we would say, well, the resources--it troubles me.

I appreciate your comments, Mr. Holder, and I guess my next question is do you feel that some type of statutory requirement would be helpful to you, on which we would perhaps work together with you to frame it--would be helpful here to provide the kind of authorization that would get this moving. Is that something we should work on?

Mr. Holder. I think we should, to the extent that we can work together on this. I guess the only concern I have is, again, dealing with a privilege that I think really does rest with the President. Exactly how we can work with this Congress in this regard is my only concern.

Senator Abraham. Well, I understand, and I guess I would raise here, obviously not to be totally resolved today, it seems to me that at least--you know, I understand that the ultimate decision a President makes, as well as his decision as to what he takes into account, is obviously protected constitutionally in the privilege that we have talked about, as well as in the duties of the office.

But it does seem to me that we can statutorily regulate the Department's role in the process as an exercise of our powers under the Constitution to make all laws which are necessary and proper for carrying into execution all powers vested by the Constitution. I mean, I think that we have that authority. And if the President says, well, I have decided I don't care about the victims and I am not going to look at this part of the report, I think that is his choice. I think if he decides to commute without looking at anything, it his choice. And we can get into separately the debate that Senator Ashcroft raised as to how Congress might have any kind of capacity to reexamine it.

But the notion that we couldn't require statutorily the

Department of Justice to prepare this information ultimately up to the President to decide whether he uses it--I am not sure that we are precluded from doing that. I mean, I don't see why we would be constitutionally.

Mr. Holder. I share your concern about making sure that we make victims a part of the process. To be very honest with you, I am just not sure off the top of my head, without doing a little more research and talking with people at OLC at the Justice Department, whether or not Congress would indeed have that power. I just don't know.

Senator Abraham. OK. Let me ask separately on the issue of victims being noticed and notified whether or not you feel that there is any constitutional bar to a statute that would at least provide or require notification of any early release before the release actually takes place but after the decision of the President.

Mr. Adams. After the President----

Senator Abraham. In other words, after the President----

Mr. Adams. No pre-decisional requirement, but a requirement that after----

Senator Abraham. In other words, let's shift gears here from the collection of information to the decision of the President. The President makes the decision to commute or pardon. Would you see any argument that would prevent us from statutorily or otherwise at least requiring notice to the victims at that point? I know there have been situations where people indicate they didn't know what happened even after it happened because not all of them necessarily receive the same attention as the case that brings us here today.

Mr. Holder. Again, this is not something I have really considered.

Senator Abraham. In other words, after-the-fact notice is what I am getting at here.

Mr. Holder. I am less troubled by that, but again there may be people far brighter than me at the Justice Department in the Office of Legal Counsel who would say, well, Eric, you know, you should remember there is this case that says you can't do that. I don't know.

Senator Abraham. Let me ask you, Mr. Adams, what is the Department's policy now? Do you have a policy of providing notice to victims after the President has made these decisions in the 111 or so cases that you mention?

Mr. Adams. No, my office does not.

Senator Abraham. Does the Department in any way, in any other of the offices?

Mr. Adams. I would have to join with Mr. Holder and say I don't know. There may be a provision in commutation cases; there may be a provision under which the Bureau of Prisons is required to notify people before at least certain types of inmates are released, regardless of the way the release was ordered. But I just don't know off the top of my head.

Senator Abraham. I will be very interested in that aspect of it, too. I wanted to focus on these two components because it seems to me you have got two situations here where some constructive improvements are possible. We may debate how that happens, whether it is in the executive context only or through a statutory action, although again I don't see how we are barred from statutorily putting in place a system of information collection which may or may not then be used by the President in making these decisions. But it does seem that is part of it, and a second part of it certainly would be the issue of assuring some type of after-the-fact notice.

And so, Mr. Chairman, I thank you for convening the hearing. I want to work with you on these two issues that I have raised here today as we move forward. We may have some

questions for our witnesses aimed at trying to get specifically to the bottom of these issues that have not been fully resolved, and I thank the witnesses.

The Chairman. Thank you.

Just to clarify this matter and to clear up some misunderstandings that some people may have, other than the White House Counsel's Office, did you chat with anybody else in the White House about this decision the President made?

Mr. Adams. Mr. Chairman, I only talk with people in the White House Counsel's Office. Neither I nor anyone on my staff is authorized to talk with anyone other than people in the White House Counsel's Office.

The Chairman. How about you, Mr. Holder? Anybody in the Justice Department?

Mr. Holder. Not to my knowledge.

The Chairman. In conclusion, let me just say that I am very disturbed by what we have heard about this FALN controversy. This issue has troubled me from the outset, and nothing I have heard here today has alleviated those concerns in the least.

As I said in my opening remarks, I will be working to craft reforms which will assure that the Pardon Attorney's Office complies with its own regulations and weighs the views of victims in the process. In addition, I believe that the Senate Judiciary Committee must do more to assess the threat created by the President's decision.

In the days ahead, I am going to work to produce a complete, expedited assessment of the threat created by the President's decision to the American public, as well as the judges, prosecutors and witnesses involved in the FALN prosecutions. So I am very concerned about it.

Naturally, this has not been the most pleasant hearing for you, but it is something that I think is essential so that we don't have something like this happen again without full consideration and full observance of the rules and the procedures of the Justice Department, and, of course, that everybody realize that the public at large is very concerned about these issues, and especially in this particular FALN case.

So with that, I appreciate having you both here and we will adjourn until further notice.

[Whereupon, at 11:56 a.m., the committee was adjourned.]

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[GRAPHIC] [TIFF OMITTED] T8017.018

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